

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of	)	
	)	
MCCARTHY VENTURES, LLC, DBA	)	OAH No. 23-0285-ABC
THE NEW GOLDEN SALOON	)	Agency No. License No. 786

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**DECISION ON SUMMARY ADJUDICATION**

**I. Introduction**

In this matter McCarthy Ventures, LLC (“MVL”) challenges a decision by the Alcoholic Beverage Control Board (the “Board”) approving a request made by the Alcohol and Marijuana Control Office (“AMCO”) to reduce the size of the licensed premises for the New Golden Saloon, an establishment owned by MVL located at the intersection of Kennicott Avenue and Barrett Way in McCarthy, Alaska. MVL and AMCO have both filed motions for summary adjudication targeting the question of whether MVL owns the streets adjacent to the Saloon and can thus can close portions of them to utilize within its licensed premises.

As explained in this decision, undisputed historical facts and property records establish that, as a matter of law, the streets adjacent to the Saloon are subject to a common law dedication dating back to McCarthy’s founding over a century ago. This dedication, which runs in favor of the public, prevents these streets from being closed by MVL and incorporated into the licensed premises of the Saloon – irrespective of who may hold fee simple title to the underlying property.

Additionally, as a matter of law a deed executed in 2016 that MVL relies upon in this matter does not grant it ownership or control of the streets adjacent to the Saloon. The straightforward and unambiguous language of that deed, which expressly dedicated all streets and alleys within the McCarthy townsite to the public, conveyed nothing to MVL.

While the parties have submitted conflicting affidavits disputing some peripheral issues of fact, resolution of those issues is not required given the foregoing conclusions of law. Accordingly, the Board’s decision to reduce the licensed premises of the New Golden Saloon is affirmed.

**II. Factual Background**

A. The unique history of the Kennecott/McCarthy area.

McCarthy’s origins trace back to the discovery of rich copper deposits in 1899 that prompted construction of the 195-mile-long Copper River & Northwestern Railway (the

“CR&NW”) between Cordova and the company town of Kennecott at the railway’s terminus.<sup>1</sup> The Kennecott Mining Company was formed to develop these deposits. The company made millions in profits between the time the CR&NW was completed in 1911, and the later abandonment of Kennecott, the railway, and surrounding mines in 1938.<sup>2</sup>

While the largest structures in Kennecott were built for processing copper ore, hundreds of miners and mill workers lived in houses and boarding facilities located there, along with some of their families. Kennecott was a carefully controlled company town where vices of the day were strictly prohibited.<sup>3</sup>

In 1906 an enterprising pioneer named John Barrett staked a 296-acre homestead between the Kennicott Glacier and McCarthy Creek located approximately 5 miles from Kennecott.<sup>4</sup> When railroad construction crews reached Barrett’s homestead in 1911, the CR&NW leased a right-of-way and a parcel of land for a locomotive turnaround and station. Since Kennecott was a company town closed to outsiders, the area around the railway station on Barrett's land became a magnet for prospectors and merchants. Recognizing this opportunity, Barrett established a townsite south of the railway station and began leasing lots to local miners and merchants.<sup>5</sup>

The precise date when John Barrett laid out this townsite is unclear, but by 1917 the resulting town – eventually named “McCarthy” – had a population of roughly 300 people to go with several hotels and restaurants, a school, three barber shops, a sheet metal shop, saloons, a red-light district, and a resident attorney.<sup>6</sup> As opposed to nearby Kennecott, McCarthy was a community where vices such as alcohol, gambling, and prostitution were freely available. The sharp contrast between the two communities prompted a local teacher to observe that “everything that is outlawed on their private grounds thrives here in McCarthy, to the shame of the government.”<sup>7</sup> The following photo of the town taken in the 1920’s demonstrates the extent to which McCarthy had become a well-developed community by that time:<sup>8</sup>

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<sup>1</sup> Rolfe G. Buzzell, Ph. D, *Cultural Resources Survey Report for Relocation of McCarthy Road*, Office of History and Archeology Report No. 107 at p. 22 (2005) (available at <https://dot.alaska.gov/nreg/projects/LakinaRiverBridgeResources/OHA107-McCarthyRd2005Report.pdf>).

<sup>2</sup> *Id.* at pp. 38-39.

<sup>3</sup> *Id.* at p. 32.

<sup>4</sup> John Barrett was granted a patent for this homestead in 1917. *See* MVL Motion, Ex. A.

<sup>5</sup> Buzzell at pp. 31-32.

<sup>6</sup> *Id.* at p. 32

<sup>7</sup> *Id.* at p. 33.

<sup>8</sup> *Id.*



**Figure 15. The town of McCarthy, also known at the time as Shushana Junction, 1920s. The CR&NW trestle bridge across the Kennicott River flood plain is in the foreground. Photo courtesy of the McCarthy-Kennecott Museum.**

The economic forces of the Great Depression, combined with increasingly depleted ore reserves, spelled the end of the boom times for Kennecott and McCarthy. The copper mines and mill ceased production in 1938, and most of the area’s residents boarded the last train to Cordova that departed Kennecott and McCarthy in November 1938. Most of the buildings, facilities, and infrastructure constructed in the preceding decades were abandoned intact because salvage costs exceeded the value of the materials.<sup>9</sup>

Within a year of the last train’s departure the population of McCarthy had dropped to 49 people. The number of holdouts dropped even further following a fire in 1940 that destroyed McCarthy’s remaining hotel, drug store and post office. As it became increasingly clear that the mines and railroad would never reopen, John Barrett and other longtime McCarthy residents left the area. By the end of World War II, the population of McCarthy was reduced to just a handful of year-round residents.<sup>10</sup> A few years later it appears that most of the region’s property records were lost when the Chitina Recorder’s Office burned in 1949.<sup>11</sup>

A notable document not lost to that fire is a warranty deed dated August 10, 1944, in which John Barrett and his wife, Josephine, conveyed “all remaining portion of the Barrett Homestead and all remaining lots in the townsite of McCarthy as shown by the Books and Plat of said Townsite” to their son, Laurence.<sup>12</sup> The deed advises that, “A Plat of the Townsite of

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<sup>9</sup> *Id.* at p. 38-39.

<sup>10</sup> *Id.* at p. 42.

<sup>11</sup> See “Miscellaneous Facts,” available at [https://dnr.alaska.gov/ssd/recoff/docs/Miscellaneous\\_Facts.pdf](https://dnr.alaska.gov/ssd/recoff/docs/Miscellaneous_Facts.pdf).

<sup>12</sup> AMCO 000222-223, recorded as Document 1976-000644-0, Chitina Recording District. In this deed, Laurence’s name is misspelled as “Lawerence.”

McCarthy and the patent to the Barrett Homestead was filed for the record in the McCarthy Recording Precinct at McCarthy, Alaska.” The deed contains the following description of the townsite lots that were – and were not – included within the scope of the conveyance:

This deed includes all leased lots that the leaseholders did not take up deed for during the twenty-five year lease period, all said lots having reverted to parties of the first part. No lots or tracts are included in this deed that parties of the first part sold and issued deeds for excepting where parties of the first part purchased said lots or tracts and are holding them.<sup>13</sup>

McCarthy was a town that refused to completely die in the years following the end of World War II due to a small group of people who continued to live there on a full-time or seasonal basis in the 1950’s and 1960’s.<sup>14</sup> McCarthy’s fortunes began to turn following completion in 1971 of a vehicle bridge across the Copper River at the site of the old CR&NW railroad bridge near Chitina. The railway grade was thereafter converted into a rough gravel road that provided vehicle access to the McCarthy-Kennecott area.<sup>15</sup> Visitors drawn by the beauty, history and remoteness of the region soon followed. Interest in the area accelerated following establishment of the Wrangell-St. Elias National Park and Preserve in 1980. With these developments, the nearly abandoned community of McCarthy was gradually reborn.<sup>16</sup>

B. Ownership claims regarding street and alleys within the McCarthy townsite.

With McCarthy’s revival in the early 1970’s, Laurence Barrett filed a quiet title action in 1974 which sought a decree confirming his ownership of the lots conveyed by the deed his parents had executed in 1944.<sup>17</sup> Apparently in connection with that litigation, the location of McCarthy’s lots, streets and alleys was confirmed through a “retracement survey” recorded in 1974 which noted that numerous survey monuments set when the townsite was first laid out 60 years earlier could still be located.<sup>18</sup> While the quiet title decree that Laurence Barrett ultimately obtained in 1978 confirmed his ownership of many lots within the townsite, no reference appears therein regarding ownership of the townsite’s streets and alleys.<sup>19</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> Buzzell at p. 44.

<sup>15</sup> *Id.* at p. 49.

<sup>16</sup> *Id.* at p. 50-51.

<sup>17</sup> *See* Decree Quieting Title, Book 8, Page 528, Chitina Recording District (issued October 4, 1978). A recent book by Alaska author Tom Kizzia devotes a chapter to the interesting backstory of this litigation. *See* Tom Kizzia, *Cold Mountain Path: The Ghost Town Decades of McCarthy-Kennecott* at 138-151 (2021).

<sup>18</sup> AMCO 000236, recorded as Document 322-1974-74-52, McCarthy Recording District. This survey covered Blocks A through H, and J through L, of the original townsite.

<sup>19</sup> *See* Decree Quieting Title, *supra* note 17.

In 1979, a second retracement survey was recorded for the small portions of the McCarthy townsite not covered by the first retracement survey. On this survey there is a “Certificate of Ownership and Dedication” signed by Laurence Barrett which advises:

I hereby certify that I am the owner of the property shown and described hereon and that this property is part of the original Townsite of McCarthy... and that I hereby dedicate all streets, avenues and alleyways, as shown on this plat to public use.<sup>20</sup>

The next recorded document offered by the parties is a deed executed on June 20, 2008, wherein Paul Barrett – the son of Laurence Barrett – conveyed all interest he held in the “streets, avenues and alleyways within the Townsite of McCarthy” to McCarthy Streets, LLC (“McCarthy Streets”), a company that he apparently controlled.<sup>21</sup> Shortly thereafter, the personal representative for the estate of Laurence Bennett executed a similar deed in favor of McCarthy Streets on June 24, 2008.<sup>22</sup> Collectively, these two documents will be referenced as the “2008 deeds.”

Nothing in the record discloses any means by which Paul Barrett could have acquired some type of ownership interest in the streets and alleys of McCarthy.<sup>23</sup> As for Laurence Barrett, any purported ownership of McCarthy’s streets and alleys would have flowed through the 1944 deed executed by his parents. Nothing in the record indicates that Laurence acquired any additional interests in the McCarthy townsite through the probate of his parents’ estates.

Eight years later, McCarthy Streets executed a deed signed by Paul Barrett (the “2016 deed”) which conveyed all interest it held in McCarthy’s streets, avenues, and alleys to “the property owners within the original townsite of McCarthy and the public.”<sup>24</sup> The following images of this two-page document helps in understanding the parties’ arguments:

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<sup>20</sup> AMCO 000238, recorded as Document 308-1979-16, Chitina Recording District. This survey covered Blocks I, M and N of the original townsite.

<sup>21</sup> MVL Motion, Ex. B.

<sup>22</sup> AMCO 000242-243.

<sup>23</sup> This is not intended to imply any improper motive for this deed. As a presumed heir of his father’s estate there may well have been sound legal reasons for Paul Barrett to execute this deed.

<sup>24</sup> AMCO 000253, recorded as Document 2016-000596-0 (Chitina Recording District).

# COURTESY

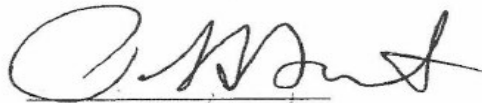
WF 76999-16-9-19 QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable <sup>no</sup> consideration acknowledged and received, the undersigned Paul A. Barrett, Grantor, 1000 Second Avenue, Suite 3500, Seattle, Washington 98104, hereby conveys and quitclaims unto the property owners within the original Townsite of McCarthy and the public Grantees, all of Grantor's interest, if any, in and to that certain property situated in the Chitina Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

All of the streets, avenues and alleyways within the Townsite of McCarthy as shown on the Original Plat of the Townsite of McCarthy, according to the retracement survey of portions of the Townsite of McCarthy filed August 9, 1974 in Book of Plats, Page 6, Serial No. 74-52, and as further described on the Partial Retracement Survey of Original Plat of the Town of McCarthy filed April 20, 1979, Plat No. 79-3 and the amendment thereto filed August 9, 1979, Plat No. 79-16, all located in Section 16, Township 5 South, Range 14 East, Copper River Meridian, Chitina Recording District, Third Judicial District, State of Alaska.

Grantee Address: P.O. Box MXY #11, McCarthy via Glennallen, AK 99588-8498


DATED this 25 day of August, 2016

  
Paul A. Barrett

STATE OF ALASKA )  
Third JUDICIAL DISTRICT ) ss.

Before me, the undersigned Notary Public, this day personally appeared Paul A. Barrett, known to me and known to me to be the person named as Grantor above, who executed and acknowledged the foregoing instrument.

Witness my hand and seal this 25<sup>th</sup> day of August, 2016.

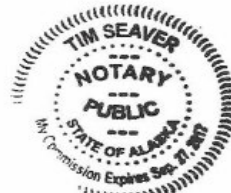
  
Notary Public in and for Alaska  
My Commission Expires: 9/27/17

### RECORD IN THE CHITINA RECORDING DISTRICT:

After Recording Return to:

~~Timothy W. Seaver  
STEWART TITLE COMPANY, LLC  
5001 Street, Suite 101  
Anchorage, AK 99501~~

Neil Darish  
PO Box MXY  
Glennallen, AK 99588



This document is being recorded by Stewart Title Company as an accommodation only. It has not been examined as to its effect, if any on the title of the estate herein.

According to comments that MVL co-owner Neil Darish made to the Board in connection with this dispute, and in a later affidavit submitted in support of MVL’s summary adjudication motion, the Recorder’s Office refused to accept this deed for recording due to the absence of an identifiable grantee. To solve this problem, above the legal description on the first page of the deed Mr. Darish inserted an asterisk after the word “public,” and wrote in MVL’s business address below the legal description.<sup>25</sup> On the second page of the deed, Mr. Darish crossed out the address to which the deed should be returned and substituted his name and the business address for MVL in its place.<sup>26</sup>

The events prompting the execution and recording of this deed are disputed by the parties. MVL contends the 2016 deed was issued for its singular benefit in settlement of a lawsuit filed against Paul Barrett and McCarthy Streets regarding the payment of rent for usage of streets within the townsite by MVL.<sup>27</sup> To the extent such rent was paid to McCarthy Streets, however, that fact is not referenced in the complaint filed by MVL. Instead, in its lawsuit MVL alleged that Paul Barrett and McCarthy Streets had committed slander of title, with the 2008 deeds characterized as “a false and baseless claim” which ignored the fact that “[MVL], its predecessors in interest, members of the general public, public entities and the State of Alaska have used the streets...and public areas of McCarthy without regard for the ownership of any third parties, including Defendants, for nearly 100 years.”<sup>28</sup> MVL further alleged that the retracement surveys recorded in 1974 and 1979 constituted “a dedication of the original streets, avenues and alleyways to the public in accordance with AS 40.15.050, that once an area is dedicated it ceases to be private property.”<sup>29</sup> Among the various items of relief requested by MVL was a “Clerk’s Deed...conveying all right, title and interest, if any, from McCarthy Streets LLC to the public.”<sup>30</sup> The procedural history of this lawsuit after it was filed is not addressed by the parties.

For its part, AMCO contends that the intent of Mr. Darrish in pursuing litigation against McCarthy Streets was to confirm that the streets and alleys of McCarthy belonged to the public, and that the wording of the deed that Paul Barrett executed in 2016 is entirely consistent with that intent.<sup>31</sup> To support its position, AMCO provided an affidavit where Mr. Barrett asserts that his

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<sup>25</sup> See Affidavit of Neil Darrish at p. 2.

<sup>26</sup> *Id.*

<sup>27</sup> MVL Motion at 3.

<sup>28</sup> AMCO 000227-000229.

<sup>29</sup> AMCO 000230.

<sup>30</sup> AMCO 000233.

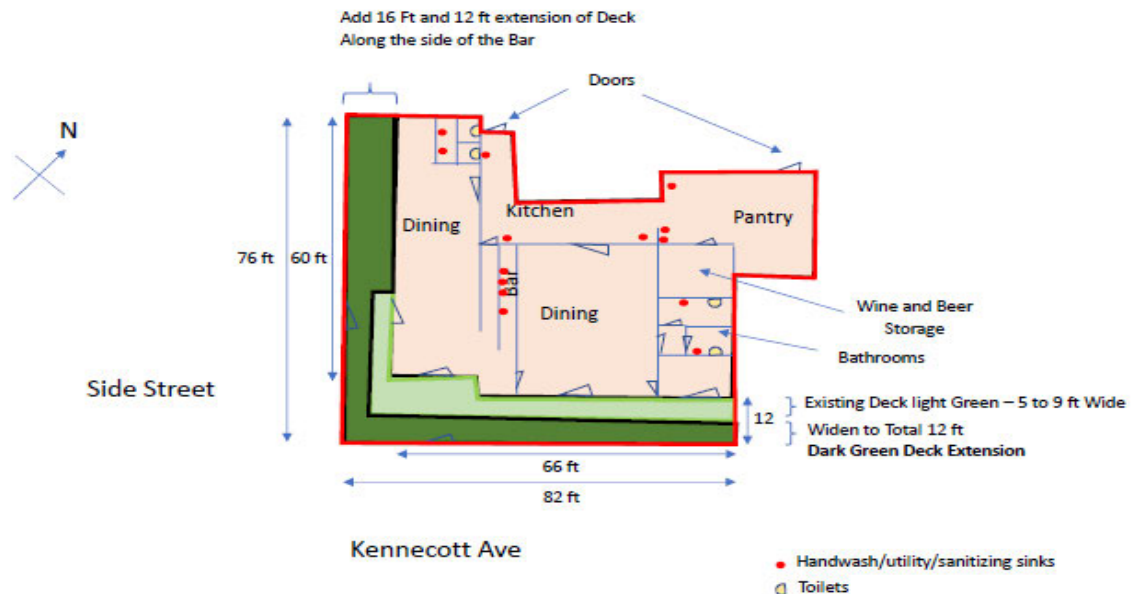
<sup>31</sup> AMCO Response at 8-9.

intent in executing the 2016 deed was to “transfer any interest we had in the streets to the public and the McCarthy Townsite property owners” as part of a settlement agreement with MVL. Mr. Barrett went on to note that “neither side [of the lawsuit] knew for certain whether or not the public had previously held any interest in the streets, and McCarthy Ventures wanted the issue settled once and for all.”<sup>32</sup>

The parties have not submitted any evidence showing that, prior to the events in 2020 described below, MVL closed any of McCarthy’s streets or took any overt action demonstrating its claim to have exclusive ownership and control over them.

C. The expansion of the licensed premises for the New Golden Saloon.

MVL acquired the New Golden Saloon and its associated alcoholic beverage dispensary license in 2001 and has continuously operated the Saloon on a seasonal basis since that time.<sup>33</sup> Prior to the onset of the COVID pandemic in 2020, the “licensed premises” where alcoholic beverages could be served to the Saloon’s patrons consisted of a dining area and a bar situated within the Saloon’s interior, and a small exterior deck situated on two sides of the building that ranged from roughly 5 to 9 feet in width. Following the onset of the COVID pandemic, on May 14, 2020, MVL applied to expand the Saloon’s licensed premises to cover a new deck as shown in this diagram:<sup>34</sup>



<sup>32</sup> AMCO 000373.

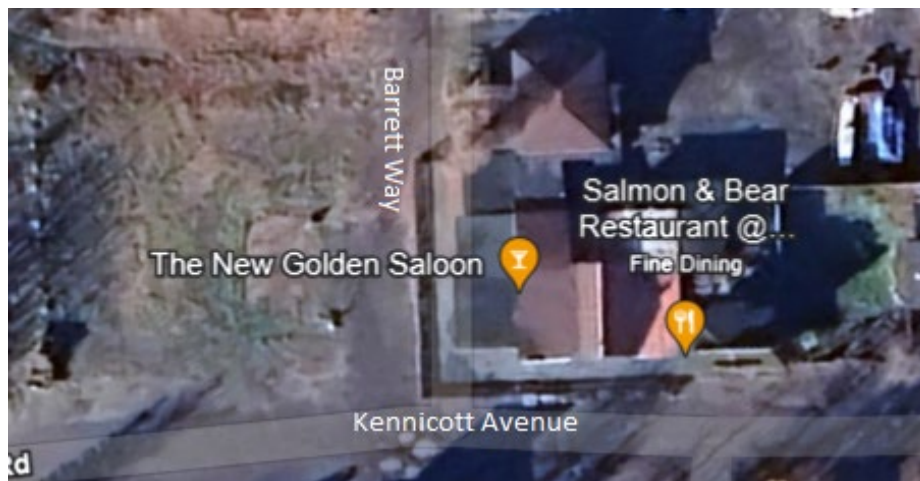
<sup>33</sup> AMCO 000003. MVL initially operated the establishment as the “Nugget Bar” before changing its name to the New Golden Saloon in 2006. See AMCO 000002.

<sup>34</sup> AMCO 000139.



While the application advised that the expanded deck was located “on our existing property,”<sup>35</sup> MVL did not provide any ownership documents or an as-built diagram to confirm this.<sup>36</sup> This request was approved by AMCO on June 5, 2020.<sup>37</sup>

The following Google Earth image shows an overhead view of the Saloon following the construction of this deck:<sup>38</sup>



On June 17, 2020, MVL submitted another request to temporarily expand the scope of its licensed premises to include an outdoor seating area located on the vacant lot across Barrett Way from the Saloon. This request was submitted using a special “AB-15” form that explicitly advised that, “The licensed premises must return to its original configurations...on November 15, 2020.”<sup>39</sup> MVL summarized the basis for its request as follows:

For 2020 we would like the AB-15 initiated for our vacant lot adjacent to our saloon approved for social distancing during busy events – such as live music and Fourth of July.<sup>40</sup>

With this request MVL provided the following diagram showing the expanded scope of the proposed licensed premises:<sup>41</sup>

<sup>35</sup> AMCO 000138. A photo of the expanded deck taken in 2021 shows that the expanded deck encroaches into the graveled and compacted portion of Barrett Way. See AMCO 000160.

<sup>36</sup> The record does not disclose whether this type of documentation is typically required of licensees making these types of requests.

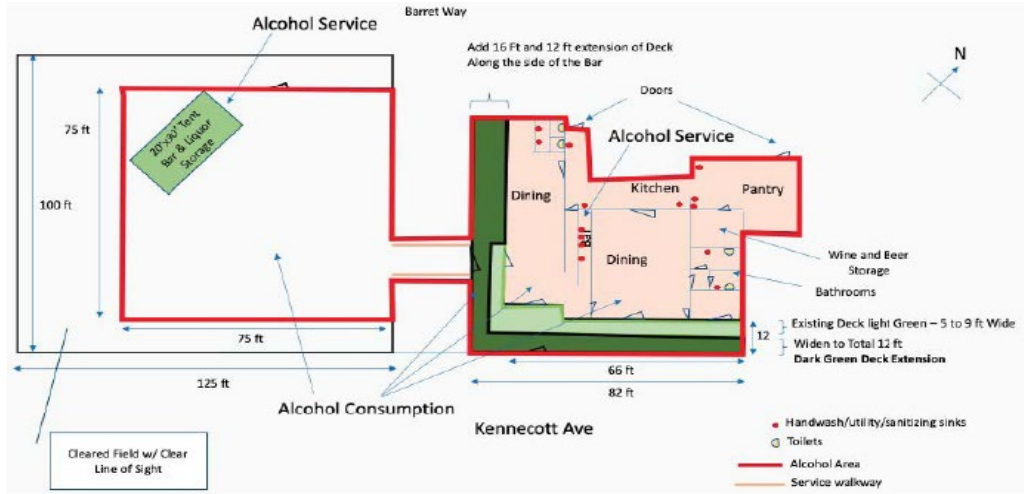
<sup>37</sup> AMCO 000140. This form has two boxes marked “Approved” and “Disapproved” next to the signature of an AMCO employee. While neither of those boxes was checked, the parties’ arguments are premised on the assumption that AMCO in fact approved this request.

<sup>38</sup> The “data attribution date” for this image is June 6, 2022, with the street names added for ease of reference.

<sup>39</sup> AMCO 000142.

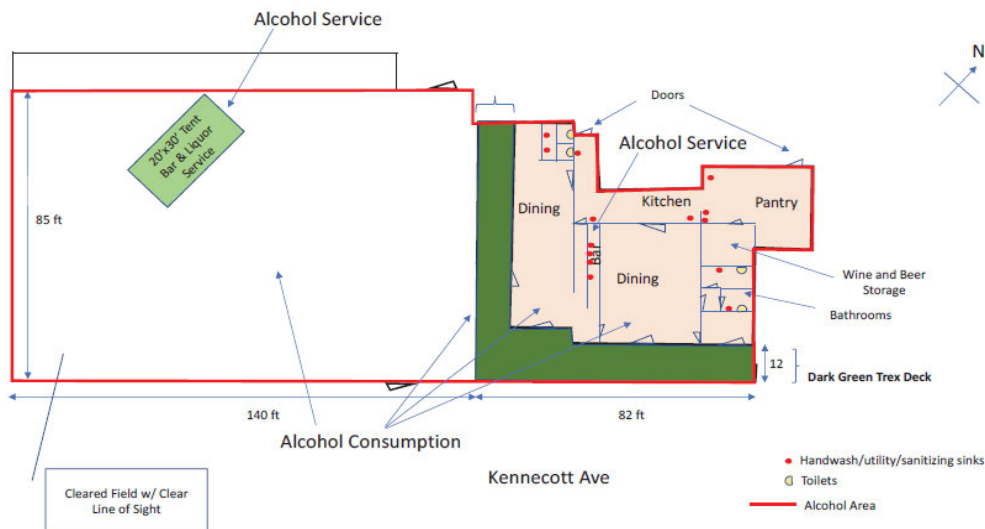
<sup>40</sup> AMCO 000143.

<sup>41</sup> AMCO 000145.



In contrast to the diagram MVL submitted the prior month, this diagram omits reference to the “Side Street” on the left side of the saloon/restaurant building. While a reference to “Barret Way” appears at the top of the diagram, the precise location of that street in reference to the expanded premises is not clearly shown. This request was approved by AMCO just 8 days after it was submitted.<sup>42</sup> MVL did not provide any type of as-built diagram confirming the location of the expanded premises in relation to the adjacent streets.

On May 20, 2021, MVL submitted a request to make permanent the expanded premises it had been temporarily allowed to utilize in 2020.<sup>43</sup> With this request MVL submitted the following revised drawing of the licensed premises for which it wanted permanent approval:<sup>44</sup>



<sup>42</sup> AMCO 000144.

<sup>43</sup> AMCO 000153.

<sup>44</sup> AMCO 000154.

In support of this request MVL, provided photos showing the expanded premises that MVL had created in 2020, including this image showing how the new deck encroached into the blocked off Barrett Way:<sup>45</sup>



This request was approved by AMCO on June 11, 2021.<sup>46</sup> Again, no documentation was provided by MVL to show its ownership of the Saloon’s expanded premises, or their location in relation to the adjacent streets. However, Mr. Darish did provide a video in which he conducted a walkaround of the premises. Therein he asserted that MVL owned the vacant lot and the cordoned-off portion of Barrett Way.<sup>47</sup>

On May 5, 2022, a resident of McCarthy sent AMCO an email complaining about the manner in which MVL had “expanded the outdoor deck of the Golden Saloon... into Barrett Way and Kennicott Avenue” and had “regularly blocked Barrett Way” on Friday nights throughout the summer of 2021.<sup>48</sup> Following an investigation into the matter, AMCO advised MVL in February 2023 that it would ask the Board to eliminate all outdoor areas from Saloon’s licensed premises based on its determination that the expanded boundaries approved in 2020 and 2021 encroached into Kennicott Avenue and Barrett Way.<sup>49</sup> When the matter came before the board on March 23, 2023, the Board voted to retain the outdoor deck within the Saloon’s licensed premises, while eliminating all other outdoor spaces for which approvals had been granted in 2020 and 2021.<sup>50</sup> MVL timely submitted a request for a formal hearing under AS 04.11.510(b)(1) in response.

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<sup>45</sup> AMCO 000160.

<sup>46</sup> AMCO 000153.

<sup>47</sup> AMCO 000252 at timestamp 00:53—01:05.

<sup>48</sup> AMCO 000206.

<sup>49</sup> AMCO 000240-241.

<sup>50</sup> AMCO 000248.

### III. Discussion

#### A. Legal Background

Under AS 04.11.090(a), the holder of a beverage dispensary license is authorized to sell or serve alcoholic beverages within its “licensed premises,” which AS 04.21.080(b)(15) defines as “all designated portions of a building or structure, rooms or enclosures in the building or structure, or real estate leased, used, controlled, or operated by a licensee in the conduct of business for which the licensee is licensed.” The scope of the licensed premises is set at the time a license is issued based on copies of deeds, lease agreement or other documents “that show right or title to, or interest in, the land and buildings at the location of the business to be licensed.”<sup>51</sup> In the context of beverage dispensary licenses, the licensed premises must be “one area.”<sup>52</sup> Once set, an establishment’s license premises may not be reduced without the Board’s approval.<sup>53</sup>

The Board may take action to reduce the scope of an establishment’s licensed premises as needed to “ensure control over the sale and consumption of alcoholic beverages on the premises or is otherwise in the best interests of the public.”<sup>54</sup> AMCO bears the burden of proof in this proceeding since it is seeking a change in the status quo under AS 44.62.460(e)(1).

#### B. The scope of this decision is limited in nature.

At the outset it should be noted that this tribunal lacks authority to determine who owns the streets and alleys of McCarthy. To the extent interested parties may want to litigate that issue, it will have to be done in superior court. The much narrower issue presented here is whether AMCO has demonstrated that Barrett Way is a public street that cannot be closed off and incorporated into the Saloon’s licensed premises. That issue can be resolved without answering the complex questions of who owns fee simple title to Barrett Way, or the extent to which private parties (or alternatively, a government agency) have legal standing to challenge the actions of property owners who build improvements encroaching into McCarthy’s streets.<sup>55</sup>

While AMCO’s motion suggests that MVL’s use of space within Kennicott Avenue is also at issue here,<sup>56</sup> the Board’s action did not impact portions of the deck built by MVL that appear to

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<sup>51</sup> 3 AAC 304.105(b)(6). It should be noted that this decision references the Board’s regulations as they were numbered in 2023.

<sup>52</sup> 3 AAC 304.185(b).

<sup>53</sup> AS 04.06.090(c).

<sup>54</sup> *Id.*

<sup>55</sup> In this context, it should be noted that the public can have a right to utilize a public right-of-way even if a private party holds fee simple title for the area in question. *See Cowan v. Yeisley*, 255 P.3d 966, 972 (Alaska 2011) (noting that a right-of-way is “primarily a privilege to pass over another’s land” that is not dependent on a conveyance of fee simple title).

<sup>56</sup> AMCO Response at 1-2.

encroach into that street.<sup>57</sup> Accordingly, this order focuses on the Board’s decision to reduce the Saloon’s licensed premises back to the boundaries approved on June 5, 2020, which allowed the new deck areas to be utilized for serving alcoholic beverages.<sup>58</sup>

Finally, no action taken by the Board regarding the scope of the Saloon’s licensed premises should be misconstrued as some form of governmental authorization for MVL to construct or maintain improvements encroaching into the streets adjacent to the Saloon. Again, this is an issue that only the superior court has jurisdiction to address.

C. MVL’s arguments for its claim of ownership over Barrett Way.

In its motion MVL argues that “Barrett Way is a private road owned by McCarthy Ventures” based on the 2008 and 2016 deeds which allegedly passed title of all of McCarthy’s streets to it.<sup>59</sup> Key to this argument is the assumption that land cannot be dedicated for some type of public use under Alaska law without the approval of a state or local planning agency.<sup>60</sup> Working from this assumption, MVL contends that the attempted dedication set out in the 2016 deed is thus inherently ambiguous, and that evidence regarding the surrounding circumstances shows that MVL was actually the intended grantee of the streets and alleys conveyed by that deed.<sup>61</sup>

A foundational premise underlying MVL’s arguments is that Barrett Way was never dedicated to the public through actions taken by John or Laurence Barrett.<sup>62</sup> Otherwise, any title that MVL acquired through the 2008 and 2016 deeds would be subject to dedications made by its predecessors in title.<sup>63</sup> Thus, the first question that must be answered here is whether, prior to issuance of the 2008 and 2016 deeds, the streets and alleys of McCarthy had been dedicated to the public. If such a dedication was made, there is no need to interpret the subsequent deeds since – regardless of who holds fee simple title to Barrett Way – the street would be subject to a prior dedication preventing its closure by MVL or any other purported owner.

For the reasons explained below, roughly a century before the 2008 and 2016 deeds were executed the streets and alleys of McCarthy were dedicated to the public through the actions of John Barrett when he laid out the townsite and thereafter sold and leased lots within it. Thus,

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<sup>57</sup> AMCO 000248.

<sup>58</sup> It should be noted, however, that the findings made in this decision regarding Barrett Way would apply with equal force to Kennicott Avenue.

<sup>59</sup> MVL Motion at p. 1.

<sup>60</sup> *Id.* at p. 10.

<sup>61</sup> *Id.* at p. 9.

<sup>62</sup> *Id.*

<sup>63</sup> *McCarrey v. Kaylor*, 301 P.3d 559, 567 (Alaska 2013).

regardless of who may hold title to the ground beneath Barrett Way, the street cannot be utilized in a manner interfering with the public purpose of that dedication.<sup>64</sup>

This decision will also evaluate AMCO's contention that, regardless of any past dedications, the 2016 deed that MVL relies upon failed to convey an ownership interest that would allow MVL to close a portion of Barrett Way and include it within the Saloon's licensed premises. As covered below, without reaching any disputed factual issues it can be determined that the 2016 deed did not convey ownership of Barrett Way to MVL.

D. There are multiple ways by which landowners can dedicate portions of their property for use as streets by the general public.

Consistent with longstanding principles recognized in most states, Alaska law provides that landowners may dedicate portions of their property for use by the public in one of two ways. The most often used means of accomplishing this is a "statutory dedication" made under laws or local ordinances governing the platting of subdivisions. Once a subdivision plat is formally approved and recorded, areas set aside for roads, alleys, or parks are "considered dedicated to public use."<sup>65</sup> Laws regarding statutory dedications were first enacted by the Alaska Territorial Legislature in 1953 and have remained on the books since then.<sup>66</sup>

The second means by which a dedication may occur is under common law principles. These "common law dedications" cover express dedications referenced in plats or deeds that are recorded without the prior approval of a state or local government, and implied dedications which, in a manner akin to prescriptive easements, are inferred from a landowner's conduct and other surrounding circumstances.<sup>67</sup> Common law dedications have been a longstanding feature of American jurisprudence and were the subject of a well-developed body of case law at the time of McCarthy's founding.<sup>68</sup>

Since there is no evidence suggesting that McCarthy's streets have ever been dedicated to the public through some type of statutory process, analysis here must be undertaken with reference to the rules of common law dedications. This requires a review of the common law as it

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<sup>64</sup> A question not addressed in this order is whether the recording of the 1974 and 1979 retracement surveys constituted a separate dedication of McCarthy's streets (which is an argument MVL raised in its 2016 lawsuit against McCarthy Streets).

<sup>65</sup> See AS 41.15.305 and AS 29.40.010.

<sup>66</sup> Session Laws of Alaska, ch. 1 and ch. 115 (1953).

<sup>67</sup> *McCarrey*, 301 P.3d at 567 (express dedications); *Swift v. Kniffen*, 706 P.2d 296, 301 (Alaska 1985) (implied dedications).

<sup>68</sup> See, e.g., H.W. Chaplin, *The Law of Dedication in Its Relation to Trust Legislation*, 16 Harv. Law Rev. 329 (1903).

existed at the time of the actions allegedly giving rise to the dedication.<sup>69</sup> Thus, whether John Barrett made a common law dedication of Barrett Way when laying out the streets and alleys of the McCarthy townsite is a question that must be answered under pre-statehood law.

E. Under the common law principles applicable at the time, John Barrett's creation of the McCarthy townsite constituted a public dedication of Barrett Way.

A unique aspect of the McCarthy townsite is the way it was situated within a private homestead. What makes this an anomaly is that Alaska townsites in the early 20<sup>th</sup> century were typically staked on public land that was free for the taking. Once boundaries for a new townsite were set, streets and lots would be surveyed as shown in a plat filed with the Government Land Office (the predecessor agency for today's Bureau of Land Management). Thereafter a trustee would be appointed by the Department of Interior to supervise the issuance of patents for individual lots.<sup>70</sup> Most of Alaska's earliest settled communities, including Juneau, Anchorage, Fairbanks, and Nome, were founded in this manner. A byproduct of this process was the filing of key documents (such as townsite plats) with a federal agency as opposed to a local recorder's office. This reduced the likelihood of these documents being lost through the destruction of records at a single recorder's office.<sup>71</sup>

These facts also mean that rights-of-way for the streets of McCarthy could not arise under RS 2477, a statute enacted by Congress in 1866 (and later repealed in 1976) which provided that public rights-of-way could be established when roads and trails were built on federal land.<sup>72</sup> Once a homestead was staked the property within its boundaries was considered to have been withdrawn from the public domain, thus preventing the creation of any RS 2477 rights-of-way within it.<sup>73</sup> Thus, the well-developed body of case law regarding RS 2477 rights-of-way, some of

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<sup>69</sup> *Price v. Eastham*, 75 P.3d 1051, 1055 (Alaska 2003) (alleged RS 2477 right-of-way evaluated under law existing at the time of the conduct giving rise to it); *Gay Johnson's Wyo. Auto. Serv. Co. v. City of Cheyenne*, 367 P.2d 787, 789 (Wyo. 1961) (scope of dedication governed by the common law which existed at the time of its creation); *Scown v. Neie*, 225 S.W.3d 303, 309–10 (Tex. App. 2006) (once created, a common law dedication is not impacted by subsequent changes of law).

<sup>70</sup> See 26. Stat. 1009; Compiled Laws of Alaska, § 48 (1913) (published at <https://babel.hathitrust.org/cgi/pt?id=mdp.39015034620149&seq=1>). A key benefit of this process is that individuals who had already established homes or businesses within a given townsite were entitled to receive patents for the property they occupied.

<sup>71</sup> Surveys for homestead and mineral patents were also filed with the Government Land Office, which is why the 1917 patent for John Barrett's homestead can still be found despite the loss of land records for the Chitina and McCarthy Recording Districts.

<sup>72</sup> Prior to its repeal in 1976, RS 2477 was codified at 43 U.S.C. § 932.

<sup>73</sup> *Hamerly v. Denton*, 359 P.2d 121, 123 (Alaska 1961)

which MVL references in its brief, offers no guidance here since it is clear that the McCarthy townsite was not laid out until *after* John Barrett had staked his homestead.<sup>74</sup>

For these reasons, the extent to which John Barrett dedicated Barrett Way to the public when he laid out the McCarthy townsite is not a question controlled by federal law. Instead, Oregon common law controls the analysis here. This follows from passage of the Alaska Organic Act by Congress in 1884, which established the first civil government for what was then the District of Alaska.<sup>75</sup> Section 7 of the Act provided:

That the general laws of the State of Oregon now in force are hereby declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this Act or the laws of the United States....<sup>76</sup>

Under Oregon law at that time, when a landowner laid out a townsite and conveyed interests in the subdivided lots to others under “a map or plan of the town, with lots, blocks, and streets marked thereon... he thereby dedicates to the public the streets and public places thereon,” with those areas incapable of ever being “appropriated by the owner to a use inconsistent with that represented by the map upon the faith of which the lots are sold.”<sup>77</sup> This principle was reaffirmed in *Baker City Mutual Irrigation Co. v. Baker City*, a case decided the same year that the CR&NW was completed, where the Oregon Supreme Court held that roads shown on a townsite plat “were dedicated to a public use, and so long as they were employed for that purpose they could not become the property of an individual.”<sup>78</sup> This remained true even if the plat in question did not expressly dedicate those roads to the public.<sup>79</sup>

The overarching goal of this case law was protecting the interests of individuals purchasing or leasing lots within a townsite, who did so under the reasonable assumption that they – and members of the public – would be able to access those lots using streets and alleys shown in a map, plan, or plat. As the Oregon Supreme Court observed in the 1917 case of *McCoy v. Thompson*, to ignore a street dedication “would be a violation of good faith to the public and to those who have acquired private property with the expectation of enjoying the use contemplated

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<sup>74</sup> See, e.g., *Fitzgerald v. Puddicombe*, 918 P.2d 1017 (Alaska 1996) (cited by MVL at page 10 of its opening brief). This explains why, when the CR&NW was built across Barrett’s homestead, it had to do so with Barrett’s permission.

<sup>75</sup> 23 Stat. 24 (1884). This is often referred to as the “First Organic Act” since Congress would revisit the topic of Alaska governance in future decades.

<sup>76</sup> While Congress passed legislation in 1891 authorizing the creation of townsites on public lands within the District of Alaska, that legislation did not address the extent to which the public was entitled to utilize areas set aside for streets and common areas by townsite organizers. See 26 Stat. 1099.

<sup>77</sup> *Steel v. City of Portland*, 23 Or. 176, 183, 31 P. 479, 480 (1892).

<sup>78</sup> 58 Or. 306, 322, 113 P. 9, 14 (1911).

<sup>79</sup> *Id.* at 321, 113 P. at 14.



by the dedication.”<sup>80</sup> Formal acceptance by a municipality was not required for a dedication to become irrevocable at the time it was made.<sup>81</sup> Instead, “the sale of single lot” within a townsite was sufficient to complete this dedication.<sup>82</sup>

The designation of an area for a street as shown on a map or plat of a townsite was particularly compelling under Oregon law:

The word “street” has a definite meaning. When the owner of land makes a plat and refers to a “street,” he does not mean a private way; but the word signifies a public way in all that the term implies.<sup>83</sup>

This rule was so strongly enforced that once a plat showed that an area was set aside for a street, this was deemed an irrevocable dedication to the public even if the area in question was not actually used for that purpose.<sup>84</sup>

Once a common law dedication was made, Oregon law held that the property in question was “restricted to the use for which it was fairly intended to be dedicated” and if “put to a use foreign to that contemplated by the intention and purpose of the dedication, then...any property owner, will have his remedy in equity to enforce the proper use, and inhibit an improper one.”<sup>85</sup> However, a common law dedication did not convey fee title to the underlying property. Instead, a dedication for a street was viewed as a form of easement, with title to the dedicated area initially retained by the property owner making the dedication. As that owner conveyed lots to others, title to areas designated as streets passed to the new owners of abutting properties.<sup>86</sup>

This approach was consistent with widely recognized legal principles of the day, as demonstrated by the United States Supreme Court’s decision in *Ashby v. Hall*.<sup>87</sup> That 1886 decision arose from efforts by a municipality in Montana to eliminate an alley dedicated to the public under an earlier townsite plat through the simple artifice of recording an updated plat which omitted all reference to the alley. In holding this was an illegal act, the Court observed:

The very notion of land settled upon and occupied as a town-site implies the existence of streets, alleys, lots, and blocks; and for the possession of the lots, and

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<sup>80</sup> 84 Or. 141, 147, 164 P. 589, 591 (1917)

<sup>81</sup> *Carter v. City of Portland*, 4 Or. 339, 347 (1873) (“it is not essential that this right of use should be vested in a corporate body; it may exist in the public, and have no other limitation than the wants of the community at large”).

<sup>82</sup> *McCoy*, 84 Or. at 151, 164 P. at 592.

<sup>83</sup> *Id.* at 148, 164 P. at 591.

<sup>84</sup> *Id.* at 148-49; 164 P. at 591 (noting that “the well-recognized rule is that neither a formal acceptance by the county nor the immediate opening and improvement of a street are essential to complete an irrevocable dedication”).

<sup>85</sup> *Church v. City of Portland*, 18 Or. 73, 83, 22 P. 528, 531-32 (1889).

<sup>86</sup> *Kurtz v. Southern Pacific Co.*, 80 Or. 213, 216-17, 155 P. 367, 369 (1916) (fee title to a dedicated street “remains in the dedicator until it passes by a conveyance of a lot, when the grantee takes and holds the title to the middle of the street upon which the land abuts, subject, however, to the public easement therein”).

<sup>87</sup> 119 U. S. 526 (1886).

their convenient use and enjoyment, there must of necessity be appurtenant to them a right of way over adjacent streets and alleys. The entry of the land carried with it such a right of way. The streets and alleys were not afterwards at the disposal of the government, except as subject to such easement.<sup>88</sup>

The Oregon Supreme Court’s view that street dedications were irrevocable after being made was likewise consistent with widely accepted common law principles of the time. As one commentator noted, it was well recognized that once a landowner made a common law dedication, “the public cannot lose their rights by failure to exercise them.”<sup>89</sup> The Alaska Supreme Court would later cite to this principle in a holding that a failure by government officials to affirmatively assert rights over an area dedicated for an “as yet unused street” did not invalidate the dedication.<sup>90</sup>

While Alaska’s reliance on Oregon law began to fade after Congress passed the Second Alaska Organic Act in 1912 – which created the Territory of Alaska and authorized the establishment of a territorial legislature – Section 3 of the Act provided that “all laws now in force in Alaska shall continue in full force and effect until amended or repealed.”<sup>91</sup> Thus, passage of the Second Organic Act did not alter existing doctrines governing common law dedications during the years when McCarthy was being built into a thriving small community.<sup>92</sup> It is also notable that, even after statehood, the Alaska Supreme Court continued to look to Oregon law for guidance in disputes arising from dedications made prior to statehood.<sup>93</sup>

As is often the case with principles of property law, the doctrine of common law dedication has changed little in the decades that have passed since McCarthy’s founding. As a current treatise notes:

As a general rule, if the owner of land lays it off into lots, with streets and alleys intersecting the same, and thereafter sells lots with reference to such streets and alleys, or with reference to a plat on which they appear, he is regarded as having dedicated to the public the land covered by such streets and alleys, including the easements appurtenant thereto....<sup>94</sup>

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<sup>88</sup> *Id.* at 529. This holding was subsequently reference in an early Alaska case, *Macintosh v. Town of Nome*, 1 Alaska 492, 496 (D. Alaska 1902), where Judge James Wickersham ruled that an area set aside for a street in a townsite tract would be “protected from trespass by subsequent claimants.”

<sup>89</sup> 16 Harv. Law Rev. at 335.

<sup>90</sup> *State v. Simpson*, 397 P.2d 288, 291 (Alaska 1964).

<sup>91</sup> 37 Stat. 512.

<sup>92</sup> The first compilation of Alaska laws – the Compiled Laws of the Territory of Alaska published in 1913 – do not contain any provisions applicable to townsites located on privately held property.

<sup>93</sup> *See Simpson*, 397 P.2d at 289.

<sup>94</sup> 4 Tiffany Real Prop. § 1103 (3rd ed. 2023).

The obvious complicating factor here is the absence of a recorded plat for the McCarthy townsite, which was presumably lost in the 1949 fire that destroyed records for properties in the McCarthy area.<sup>95</sup> However, it is an indisputable historical fact that, within a few years of the CR&NW being completed in 1911, John Barrett set aside a portion of his homestead for a townsite. In doing so, he commissioned a survey – later recaptured in the 1974 and 1979 retracement surveys – which laid out McCarthy’s lots and blocks, along with the streets and alleys providing access to them.<sup>96</sup> The fact a small but thriving community was subsequently developed within this townsite that included a variety of businesses and private residences is also indisputable.

While there is nothing in the record explaining why the retracement surveys are so detailed (for example, the 1974 retracement survey still shows the dedication of a townsite lot for a long defunct McCarthy School District), the reasons for this are ultimately irrelevant since the arguments presented by MVL presuppose the existence of an original townsite plat that was functionally identical to that shown in the retracement surveys. This follows from the legal description in the 2016 deed on which MVL bases its claims of ownership, which describes the property being conveyed as:

All of the streets, avenues and alleyways within the Townsite of McCarthy *as shown on the Original Plat of the Townsite of McCarthy*, according to the retracement survey of portions of the Townsite of McCarthy filed on August 9, 1974 in the Book of Plats, Page 6, Serial Number 74-52.<sup>97</sup> (Emphasis added.)

This legal description – and the deed in which it is contained – would be meaningless without reference to the original plat of the McCarthy townsite as set out in the retracement survey. Quite simply, MVL could not claim to own the streets and alleys established and platted by John Barrett while simultaneously denying the existence of the original plat setting out the precise locations of those streets and alleys.<sup>98</sup>

Additionally, MVL’s claim of ownership flows through the 1944 deed in which John and Josephine Barrett conveyed to title of their homestead and the properties they owned within the

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<sup>95</sup> If the original plat still existed, a straightforward application AS 40.15.050 would compel the conclusion that the streets of McCarthy had been dedicated to the public. Paul Barrett alludes to this in the affidavit he signed in this matter. AMCO 000372.

<sup>96</sup> Paul Barrett – who is John Barrett’s grandson – notes in his affidavit that his grandfather personally designed McCarthy’s street layout, with the street named Barrett Way fronting his grandfather’s house. AMCO 000370.

<sup>97</sup> AMCO 000253.

<sup>98</sup> In a similar vein, MVL’s ownership of the property underlying the Saloon relies on a deed which references the lot and block numbers of the “McCarthy Townsite.” See AMCO 000061.

McCarthy townsite to Laurence Barrett. This deed explicitly states that John Barrett recorded a plat for the McCarthy townsite, and thereafter leased and sold multiple lots within it. Under the Oregon law applicable here, those actions would have made the public dedication of McCarthy's streets and alleys fixed and irrevocable.<sup>99</sup> While John Barrett eventually joined the exodus of people who left McCarthy in the 1940's to never return, his public dedication of the community's streets and alleys did not depart with him.

Accordingly, since Barrett Way was irrevocably dedicated to the public under applicable common law principles when John Barrett carved out a portion of his homestead for the McCarthy townsite and began marketing lots within it, that street remains an area dedicated to the public for use as a right-of-way that cannot be blocked off for the exclusive use of MVL. Contrary to the argument made by MVL, the fact a governmental agency did not approve the townsite plat or act in some other manner to accept this dedication is irrelevant.<sup>100</sup>

Whether Barrett Way is characterized as a thoroughfare, or a dead-end street, is likewise irrelevant to this analysis since the manner in which this street was laid out shows that it serves the public purpose of providing access to abutting lots and intersecting streets.<sup>101</sup>

As AMCO correctly notes, a beverage dispensary licensee cannot be allowed to operate if it lacks the ability to exercise control over the entirety of its licensed premises.<sup>102</sup> Since MVL lacks the legal authority to exercise control over Barrett Way, the Board's decision to exclude areas located within that street from the Saloon's licensed premises must be upheld. This in turn means that the vacant lot on the other side of Barrett Way cannot be included within the Saloon's licensed premises, since this would otherwise violate the "one area" requirement imposed by the Board's regulations.<sup>103</sup> Thus, the Board's decision to eliminate that lot from the Saloon's licensed premises must also be upheld.

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<sup>99</sup> This would remain true even if John Barrett never recorded the townsite plat, since, under the holding of *Steel v. City of Portland*, a public dedication could occur under a "map or plan" utilized for marketing townsite lots. 23 Or. at 183, 31 P. at 480.

<sup>100</sup> In addition to the Oregon authorities cited above (which make it clear that no such governmental approval was needed for common law dedications), the Alaska Supreme Court has held that a "public easement" is valid and enforceable notwithstanding the absence of any action by the local borough to "identify and plat its location." *Offshore Systems-Kenai v. State, Dep't of Transp. & Pub. Facilities*, 282 P.3d 348, 356 (Alaska 2012)

<sup>101</sup> AMCO 000236.

<sup>102</sup> See AS 04.06.090(c) (authorizing the Board to reduce the area of an establishment's licensed premises as needed to "ensure control over the sale and consumption of alcoholic beverages on the premises or is otherwise in the best interests of the public").

<sup>103</sup> 3 AAC 304.185(b).

F. The 2016 deed did not convey ownership of Barrett Way to MVL.

In its motion for summary adjudications, AMCO argues that the 2016 deed did not convey ownership of Barrett Way (or any other streets) to MVL. For its part, MVL argues that the deed is inherently ambiguous, and that this ambiguity must be resolved by reference to surrounding circumstances which – in its view – demonstrate the deed’s actual intent was to convey ownership of all of McCarthy’s street and alleys to MVL.<sup>104</sup>

The starting point for addressing MVL’s argument is interpreting the 2016 deed. As set out in *McCarrey v. Kaylor*, Alaska law calls for a three-step analysis when interpreting deeds:

The proper first step in deed construction is to look at the four corners of the document to see if it unambiguously presents the parties' intent. Whether a deed is ambiguous is a question of law. If a deed is ambiguous, the next step is to consider the facts and circumstances surrounding the conveyance to discern the parties' intent. In the event that the parties' intent cannot be determined, we rely on rules of construction.<sup>105</sup>

Consistent with this approach, the first step here is analyzing the 2016 deed to determine whether it is ambiguous. In arguing that it is, MVL focuses on the language which conveys the streets and alleys of McCarthy to “the property owners within the original Townsite of McCarthy and the public...”<sup>106</sup> MVL contends that this language is hopelessly contradictory since it attempts to convey an interest in land to a defined group of individuals (specifically, those owning lots in the McCarthy townsite), and the undefinable individuals who constitute the general public. MVL contends that “[s]uch a grant is impossible.”<sup>107</sup>

The problem with this argument is that Alaska law permits landowners to set aside land or create easements for public use, and that a common law dedication can result when “the owner of an interest in land transfers to the public a privilege of use of such interest for a public purpose.”<sup>108</sup> In clear and unambiguous fashion, the 2016 deed makes this type of public dedication. While the deed specifically references landowners within the McCarthy townsite as beneficiaries of this dedication, this superfluous language does not support a finding of ambiguity since there are no special rights or privileges conveyed to them under the deed which vary from the rights expressly dedicated to the public.

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<sup>104</sup> MVL Motion at 10-11.

<sup>105</sup> *McCarrey*, 301 P.3d at 563.

<sup>106</sup> AMCO 000253.

<sup>107</sup> MVL Motion at 9.

<sup>108</sup> *Hamerly*, 359 P.2d at 125. *See also Swift*, 706 P.2d at 300 (a common law dedication transfers an interest to the public).

MVL additionally contends that the 2016 deed is ambiguous based on its belief that a public dedication cannot occur absent formal acceptance by a governmental entity under the procedures set out for statutory dedications.<sup>109</sup> As noted above, however, a valid common law dedication can be made without resort to those statutory procedures. While the Alaska Supreme Court has held that a common law dedication must be “accepted” to be effective, that acceptance can occur through “public use consistent with the offer of dedication or by substantial reliance on the offer of dedication that would create an estoppel.”<sup>110</sup> Thus, a deed which makes an express common law dedication is not rendered ambiguous by the fact this dedication will not be fully accepted until the public starts making use of the dedicated areas.

The ultimate problem that MVL faces is that the 2016 deed as signed by Paul Barrett nowhere mentions an intent to convey any type of ownership interest to MVL. The alternations that Mr. Darish made prior to recording the deed are irrelevant here since – as common sense would suggest – a third party cannot make itself the beneficiary of a deed by altering its terms subsequent to it being executed and delivered by the grantor. After the fact alternations such as those made by Mr. Darish do not cause a deed to be void, or ambiguous. Instead, the deed is regarded as “enforceable in accordance with its original terms.”<sup>111</sup> Since the unaltered deed made no mention of any property interest being conveyed to MVL, as a straightforward matter of law the 2016 deed cannot be interpreted in a manner that validates MVL’s claim that it owns the streets adjacent to the New Golden Saloon.

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<sup>109</sup> MVL Motion at 11.

<sup>110</sup> *State v. Fairbanks Lodge No. 1392, Loyal Order of Moose*, 633 P.2d 1378, 1380 (Alaska 1981).

<sup>111</sup> *Lee v. Lee*, 175 Cal. App. 4th 1553, 1557, 97 Cal. Rptr. 3d 516, 520 (2009). *See also Julian v. Petersen*, 966 P.2d 878, 881 (Utah Ct. App. 1998) (“the post-delivery alteration of a deed by the grantee without the knowledge and agreement of the grantor results in no enforceable change in the conveyance”). *Nat’l Bank of Com. v. May*, 583 S.W.2d 685, 689 (Tex. Civ. App. 1979) (“the material alteration of the deed, after its execution and delivery but prior to recordation, is of no effect and that the deed is effective as originally written”).

**IV. Conclusion**

For the reasons outlined above, MVL's motion for summary adjudication is DENIED, and AMCO's motion for summary adjudication is GRANTED. Consistent with these rulings, the Board's decision to reduce the licensed premises of the New Golden Saloon is AFFIRMED.

DATED: January 19, 2024.

By: 

Max Garner  
Administrative Law Judge

## Adoption

The Alcoholic Beverage Control Board adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 16th day of April , 2024.

By: \_\_\_\_\_[signature redacted]\_\_\_\_\_  
Name: Dana Walukiewicz  
Board Chair