From: Bob Gastrock
To: House Transportation
Subject: Support for HB 136
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To: House Transportation Committee...

I have lived in Alaska for 55 years, almost all of which was at Flying Crown in South Anchorage. Part of the Flying Crown subdivision is encumbered by a Right of Way (ROW) for the Alaska Railroad.

During my first 10 years at Flying Crown the federal government owned and operated the Alaska Railroad. During that time the relationship between Flying Crown homeowners and the Railroad was always cordial and mutually supportive. We shared the common goal of minimizing pedestrian traffic on the ROW and airport grounds.

After the Railroad was sold to the State in 1982, things changed. The Alaska Railroad Corporation - known commonly as ARRC – took control of Railroad operations on behalf of the State. They began describing the ROW as something they "owned," and monetized it by requiring permits and fees from any party desiring to use or cross any portion of the easement. They claimed more than a surface easement, even charging other parties for subsurface use that did not affect railroad operations.

Flying Crown owners were one of the parties affected. Once a handshake agreement with the Federal Railroad, "permission" for Flying Crown to continue using its own property now became burdened by required legal contracts (permits), insurance requirements, and ever increasing fees. Before it was challenged, ARRC was charging Flying Crown $4500 per year, with increases added with each permit renewal.

In 2014, ARRC adopted the Residential ROW Use Policy (RRUP), aimed at charging all property owners along the tracks with onerous restrictions and fees. This for simply having a lawn, garden, or raspberry bushes on the owners' property, although within the ROW boundary. The cost for some homeowners was to be thousands of dollars annually. Only after a public uproar did ARRC rescinded the policy in 2017. Still, their intent to monetize the ROW at every opportunity – at the expense of vested property owners - had been revealed.

In an effort to rein in ARRC's aggressive posture toward adjacent property owners, the Legislature amended AS 42.40.350(a) to limit ARRC's authority to what they could demonstrate the federal government granted the State in the ownership transfer. When Flying Crown requested such documentation, ARRC sued Flying Crown in Federal Court. Inexplicably, the District and 9th Circuit declared that ARRC has exclusive use of the ROW, but did not specify the circumstances under which ARRC can exclude property owners from the ROW. Without such specificity, ARRC can continue to extort property owners under the threat of exclusion. Moreover, the court's "exclusive use" ruling gives ARRC total control of determining what activity is permitted in the ROW, removing the judicial process as an option for conflict resolution.

Ultimately, the State has the right to set management policy for the ROW. HB 136 will establish that property owners can use their property within the ROW so long as such use does not interfere with Railroad operations.

I urge you to approve this Bill to protect all vested property owners in Alaska.

Thank you for your time,

Robert Gastrock