



2026 OSLS Fall Conference

September 11, 2026

River Spirit Casino, Tulsa, OK

Lunch and Afternoon session sponsors:



**Rights and Responsibilities in the
Lands of Others –
The Effect of Easements on
Surveyor's Work**

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Tulsa, OK – September 2026

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Oklahoma Definitions

Title 25. Definitions and General Provisions

OKS § 25-26: Other Definitions

1. The word "property" includes property, real and personal.
2. The words "**real property**" are coextensive with lands, tenements and hereditaments.
3. The words "personal property" include money, goods, chattels, things in action and evidences of debt.

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Oklahoma Definitions

Title 60. Property

OKS § 60-503: Definitions (regarding condominiums)

(p) "**Property**" means and includes the land, whether leasehold or in fee simple, the building, all improvements and structures thereon, and all **easements, rights and appurtenances** belonging thereto;

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Rights and interests in land:

Title

"Title is the means whereby the owner of lands has the most possession of his property. The union of all the elements which constitute ownership...."

(Black's Law Dictionary, 1979)

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Ownership

"Collection of rights to use and enjoy property, including right to transmit it to others...The entirety of the powers of use and disposal allowed by law....The right of one or more persons to possess and use a thing to the exclusion of others...."

(Black's Law Dictionary, 1979)

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Oklahoma Definitions

Title 60. Property

OKS § 60-5 Real property defined

Real or immovable property consists of:

1. Land.
2. That which is affixed to land.
3. That which is incidental or appurtenant to land.
4. That which is immovable by law.

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Possession

".... A person who knowingly has direct **physical control** over a thing, at a given time, is then in **actual** possession of it.

"[One] who, although not in actual possession, knowingly has both **the power and the intention** at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in **constructive** possession of it..."

(Black's Law Dictionary, 1979)

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Rights

"...Rights are defined generally as 'powers of free action.'...'a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others.'"

(Black's Law Dictionary, 1979)

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Interests in Land

"The most **general term** that can be employed to denote a right, claim, title, or legal share in something. In its application to lands or things real, it is frequently used in connection with the terms '**estate**', '**right**', and '**title**.' More particularly it means a right to have the advantage accruing from anything; **any right in the nature of property, but less than title**..."

(Black's Law Dictionary, 1979)

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Easement defined

- “An **interest** which one person has in the land of another...An interest in land in and over which it is to be enjoyed, and is distinguishable from a ‘**license**’ which merely confers personal privilege to do some act on the land.”
- -*Black’s Law Dictionary*

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Oklahoma Definitions

Title 60. Property

OKS § 60-1502: Definitions (Easement Relocation Act)

4. “**Easement**” means a **nonpossessory property interest** that:

- a) provides a right to enter, use, or enjoy real property owned by or in the possession of another, and
- b) imposes on the owner or possessor a duty not to interfere with the entry, use, or enjoyment permitted by the instrument creating the easement or, in the case of an easement not established by express grant or reservation, the entry, use, or enjoyment authorized by law

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Easements distinguished

- **License**
 - A personal privilege to do some act on land
 - Encroachments into easements
 - Some states: If no writing, then license only (unless easement by estoppel)

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Easements distinguished

- **Covenant**

- A promise or agreement restricting use of land and binding on future owners of the land.
- It may be in the form of covenant, restriction, or condition

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The parties:

- **Dominant estate**
- **Servient estate**
- **Estate** - "The degree, quantity, nature, and extent of interest which a person has in real and personal property."
 - -*Black's Law Dictionary*

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Types of easements

- **Appurtenant easements**
 - Run with the land
- **Personal easements in gross**
 - Non-transferable

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Oklahoma Definitions

Title 60. Property

OKS § 60-1502: Definitions (Easement Relocation Act)

11. "Real property" means an estate or interest in, over, or under land, including structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of land whether or not described or mentioned in the contract of sale or instrument of conveyance. ...

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Oklahoma Definitions

Title 16. Conveyances

OKS § 16-14. Terms defined.

The words "land," "real estate" and "premises" when used herein or in any instrument relating to real property, are synonyms and shall be deemed to mean the same thing, and unless otherwise qualified, to include lands, tenements and hereditaments; and the word "**appurtenances**" unless otherwise qualified shall mean all improvements and **every right** of whatever character pertaining to the premises described.

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Types of easements

- **Commercial easements in gross**

- Terminate when purpose terminates
- Can be divided into fractional interests
- Can be transferred for same purposes
- Allow joint use (pole attachments, shared ditch)

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Types of easements

- Affirmative
- Negative
- And many others...(quasi, reciprocal negative, secondary, intermittent, etc.)

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Right-of-Way

- Defined:
 - Strip of land?
 - Easement?
 - Public way?
 - Private way?

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Right of Way vs. Easement

OKS § 60-381. Capacity to take property by gift

The legal capacity of the State of Oklahoma, and of each county, city, town and school district in the state, to take title or any interest therein including, but not limited to, right-of-way or right-of-way easements in the case of a county, legal, equitable, or both, to any property, real, personal or mixed, by gift, testamentary or otherwise, as well as by purchase, is hereby specifically approved and affirmed.

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Right of Way vs. Easement

OKS § 60-813. Governmental authority holding only easements for use as rights-of-way

In situations in which a governmental authority or agency holds only an easement for use as a right-of-way over land on which is constructed a highway, street, road, alley or bridge:

1. The governmental authority or agency shall possess for and on behalf of the public the right to use such easement ..., subject to all other laws pertaining thereto; and
2. [use of the airspace over, under or upon the ROW]

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USC TITLE 43 - PUBLIC LANDS **CHAPTER 22 - RIGHTS-OF-WAY AND OTHER** **EASEMENTS IN PUBLIC LANDS**

- Sections 934-943
 - Authority of Attorney General to grant ROW through public land
 - Location and mapping of railroad grants
 - Forfeiture of railroad rights
 - ROW for Alaska railroads
 - ROW for Minnesota railroads

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Those pesky section line roads...

Opinion No. (2003)

Oklahoma Attorney General Reports

The question: "what is considered a 'public road' with regard to roads under the jurisdiction of county commissioners?"

The answer additionally addressed the following:

- US Congressional Acts
- OK Constitution
- OK Statutes

(Cited cases support assessment of public/private status)



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A few references for Section Line Roads in OK



- Denton v. Board of County Commissioners of McClain County, 873 P.2d 1039, OK Supreme Ct., 1964
- Salyer v. Jackson, 232 P. 412, OK Supreme Ct., 1924
- Oldfield v. Donelson, 565 P.2d 3, OK Supreme Ct., 1977
- 1890 Oklahoma Territory Organic Act
- 1902 Cherokee Allotment Act, 1906 Osage Allotment Act, 1906 Five Civilized Tribes Act
- OK Constitution Article 16, Section 2
- OK Statutes Title 69

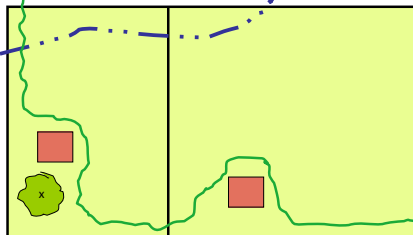
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Creating Easements

- by express grant
- by implication
- by necessity
- by prescription
- by condemnation

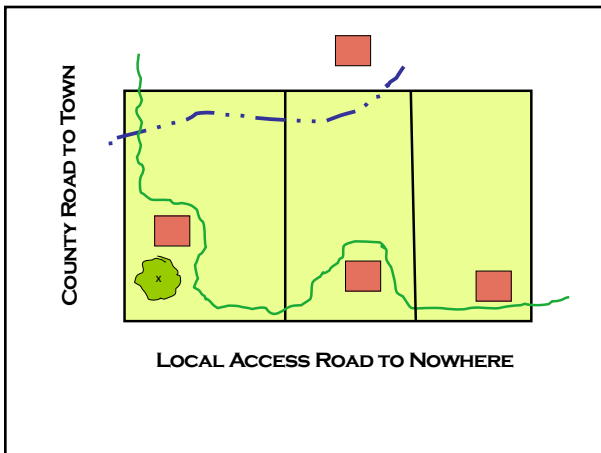
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COUNTY ROAD TO TOWN

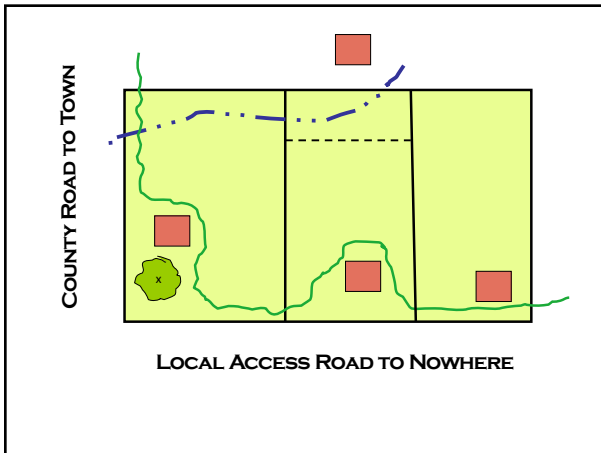


LOCAL ACCESS ROAD TO NOWHERE

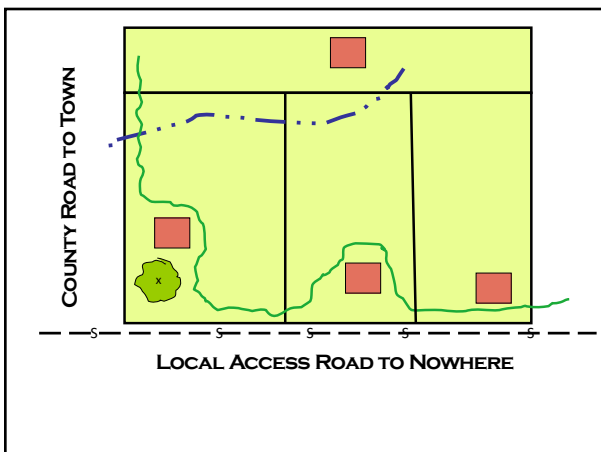
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Prescriptive rights

- Open
- Notorious
- Exclusive
- Continuous for statutory period
- Under claim of right
- For *use*, not ownership

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Irion v. Nelson

249 P.2d 107, Supreme Ct. of OK, 1952



Are there public rights by prescription in the road crossing Irion’s fenced and cultivated land?

32

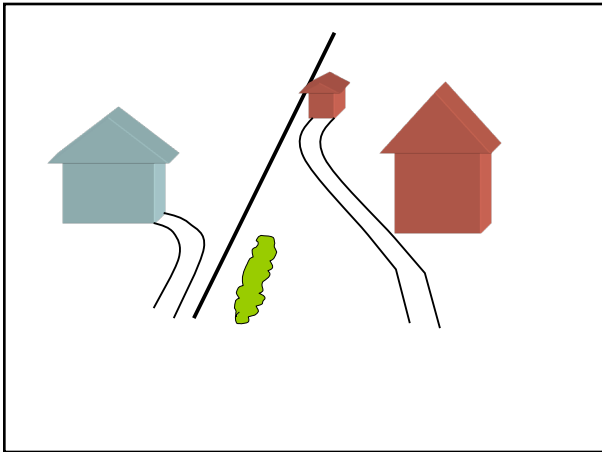
OK Title12: Civil Procedure

OKS § 12-93: Limitation of Actions

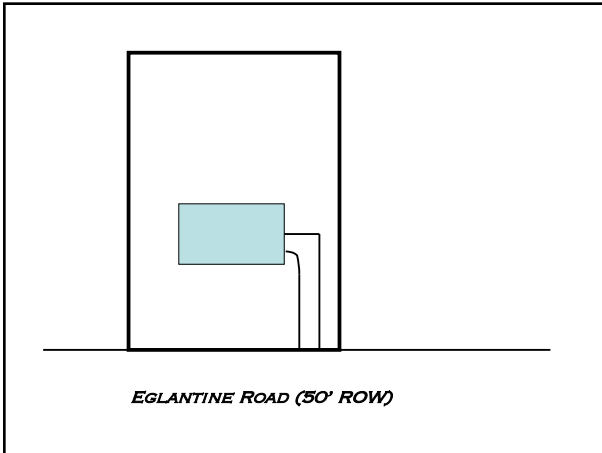
Actions for the recovery of real property, or for the determination of *any adverse right or interest* therein, can only be brought within the periods hereinafter prescribed, after the cause of action shall have accrued, and at no other time thereafter:

(4) An action for the recovery of real property not hereinbefore provided for, within fifteen (15) years.

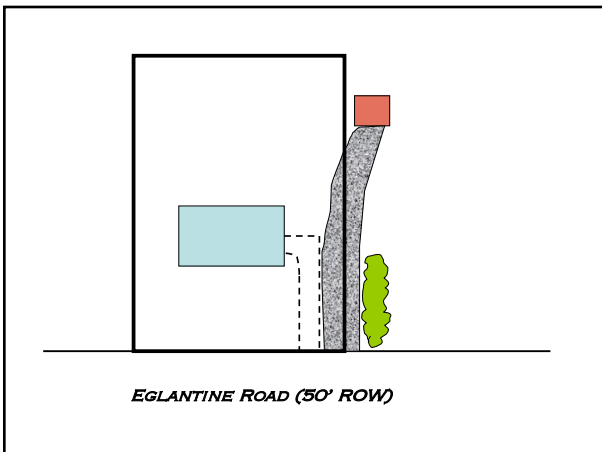
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Doesn't a transfer need to be in writing?

• Statute of Frauds

- Name of parties
- Consideration
- Description
- Signatures
- Words of conveyance
- Legal capacity of parties
- Delivery and acceptance



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OKS § 15-136: Statute of Frauds

The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, by an agent of the party or by a broker of the party ...

4. An agreement for the leasing for a longer period than one (1) year, or for the sale of **real property, or of an interest therein**; and such agreement, if made by an agent or a broker of the party sought to be charged, is invalid, unless the authority of the agent or the broker be in writing, subscribed by the party sought to be charged.

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Brown v, Mayfield

786 P.2d 708, Ct. of Civil Appeals of OK, 1989

"There are no documents, deed, contracts or other writings pleaded or adduced into evidence that give the Brown group a claim of a dominant estate over the Mayfields' land, or that give rise to their nebulous claim of color of title."

(Refers to Fox v. Pierce)

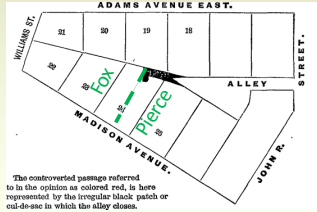


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Fox v. Pierce

50 Mich. 500, MI Supreme Ct., 1883

"...a right of way which is too indefinite for a determinate description is too indefinite to be established and protected by the court ... No more can be drawn from the facts than they contain."



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Other writings

- Statutory / regulatory creation
 - Federal laws
 - State laws
 - Local ordinances

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Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc.231 Cal App. 4th 134, Nov. 2014

- We may need to look at legislation to understand if railroads own the land under their tracks or if they only hold easements for use and possession of the surface.

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Extent of ownership

**“Cuius est solum eius est usque
ad coelum et usque ad infernos.”**

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OK Airspace Act

- **§ 60-802. Airspace defined - Provisions pertaining to aviation not affected.**
...that space which extends from the surface of the earth upward and which is either occupied or subject to being occupied for the reasonable enjoyment and use of the land surface and any structures thereon by the surface owner or owners.... the vertical upward extension of his or their surface boundaries.
- **§ 60-803. Airspace as real property.**
- **§ 60-804. Airspace subject to same statutes, rules of law and common law as other real property.**

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US Air Rights

49 US Code § 40103 – Sovereignty and use of airspace

- (a) Sovereignty and Public Right of Transit
- (b) Use of Airspace

49 U.S. Code Chapter 448 – Unmanned Aircraft System [§ 44801- § 44810]

(for UAVs, also see www.FAA.gov/uas and 14 CFR Part 107, § 107.1- § 107.205)

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OK Mineral Rights

Title 64. Public Lands

OKS § 64-1022: Reservation and retention of oil, gas and other minerals under certain lands.

The Commissioners of the Land Office shall reserve and retain one hundred percent (100%) of all oil, gas and other minerals under any school lands and shall not sell any oil, gas or other mineral interest under the authority or jurisdiction of the Commissioners.

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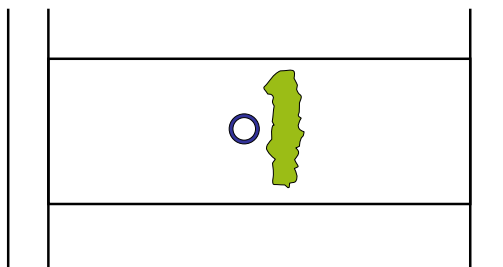
US Mineral Rights

30 USC § 707 – Reservation of Mineral Rights

In any conveyance under this chapter the mineral interests of the United States in the lands conveyed are reserved for the term of the estate conveyed.

...The underlying oil, gas, and other leasable minerals of the United States are reserved for exploration and development purposes, but without the right of surface ingress and egress, and may be leased by the Secretary under the mineral leasing laws.

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Equity

Estoppel

Must it be in writing?

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Mid-America Pipeline Co. v. Wietharn

787 P 2d 76, Supreme Ct. of KS, 1990

- When an easement is violated, what are the rights of each party (dominant and servient)?
- When is "balancing the equities" appropriate?
- When does estoppel apply to the dominant estate?

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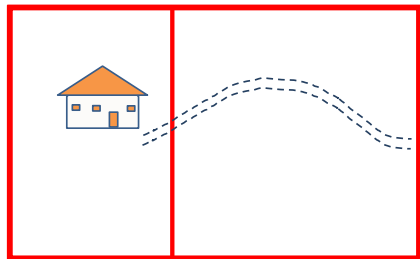
Must it be in writing?

Implied easement:

An easement resting upon the principle that, where the owner of two or more adjacent lots sells a part thereof, he grants by implication to the grantee all those apparent and visible easement which are necessary for the reasonable use of the property granted, which at the time of the grant are used by the owner of the entirety for the benefit of the part granted...

- Black's Law Dictionary

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Public Road to Town

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Easement of necessity

One in which the easement is indispensable to the enjoyment of the dominant estate.

Easement by necessity

Such arises by operation of law when land conveyed is completely shut off from access to any road by land retained by grantor or by land of grantor and that of a stranger.

- *Black's Law Dictionary*

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Ghen v. Piasecki

410 A.2d 708, NJ Super. Ct. App. Div. 1980

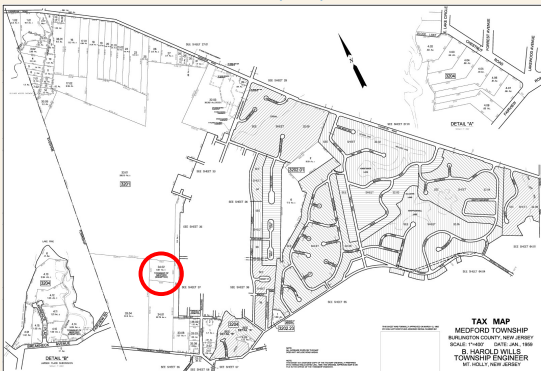
The questions to the court, and its answers

- Is there an implied easement?
- When and how is an easement by necessity established?
- What are the dimensions of an easement by necessity?

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Ghen v. Piasecki

410 A.2d 708 (1980)



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Custom Warehouse, Inc. v. Lenertz
 975 F. Supp. 1240, US Dist. Ct. for the
 Eastern Dist. of MO, Southeastern Div., 1997

- Is there an easement by prescription, by implication, by necessity, or not at all?

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Intent and meaning of language

- Parts of a deed (caption, body, augmenting clauses, habendum clause)
- What interests are being conveyed?
- Language of the era
- Clarity of description
- Monetary exchange (nominal or fair market value?)

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Chevy Chase Land Co. of Montgomery v. US

37 Fed. Cl. 545, 1997

Was the conveyance for an easement
or full title? Did abandonment of rail use
cause a reversion of title?

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Reserving versus Excepting

A **reservation** creates a right for the first time,
which is kept for the grantor (and therefore is
excluded from the transaction)

An **exception** withholds an existing interest that
otherwise would transfer to the grantee

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Deed Book 1212, Page 314 (May 26, 1923)

"Excepting and reserving therefore a right-of-way sixteen
(16) feet in width along the southerly line of the above
described premises running easterly and connecting with
certain other rights-of-way described in deeds recorded in
the Bergen County Clerk's office in book 776 of deed page
258 book 896 of deeds page 148 and the deed to Rathburn
and wife above referred to said right-of-way to be for the
lawful use and benefit of all owners of the premises herein
described as well as owners of other lands of the grantor
situate west of said premises."

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OK Easement Relocation Act

Title 60. Property, § 60-1501 thru 1511

- § 60-1503. Application — Exclusions
- § 60-1504. Right of servient estate owner to relocate easement
- § 60-1505. Civil action to obtain order to relocate
- § 60-1506. Requirements to approve order
- § 60-1507. Expenses of relocation
- § 60-1508. Duty to act in good faith
- § 60-1509. Construction of improvement as condition — Affidavit requirement
- § 60-1510. Easement relocation limitations
- § 60-1511. Servient estate owner rights — Non-waiver.

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Termination or Extinction of Easements

- by release agreed upon by involved parties
- by termination of the need by merger
- by destruction of the servient estate
- by increased burden or inconsistent use
- by abandonment of the easement

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OKS § 60-59. Servitude extinguished, how

1. [vesting of rights to the easement and the servient estate in the same person].
2. [destruction of the servient estate]
3. [any act on either tenement, by the easement holder or with his assent, that is incompatible with the easement's nature or exercise]
4. [disuse of rights acquired by prescription for the statutory period for acquiring adverse rights]

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Brogden v. Billington

172 P.2d 332, OK Supreme Ct., 1946

The Brogdens have interfered with the Billingtons' use of a reserved 40' wide road easement. The Brogdens insist the easement has been terminated.



paved road

	1939 Billington to Gilliam
Billington	1941 Billington to Brogden

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Termination or Extinction of Easements

- Expiration or purpose ceases
- Foreclosure
- Adverse possession or prescription
- Filing quiet title action

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OKS § 11-42-101: Definitions

Title 11. Cities and Towns

- "**Close**" means a legislative act of the governing body of a municipality discontinuing the public use of a public way or easement without affecting title to real property;
- "**Vacate**" means the termination, by written instrument, as provided in Section 42-106 of this title, or judicial act of the district court, of private and/or public rights in a public way, easement or plat and vesting title in real estate in private ownership;

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OKS § 11-42-101-115

(vacating easements: Title 11 - Cities and Towns)

- Municipal application to district court - public notice - right to oppose and resist - hearing and determination
 - Vacation of plats or public ways does not invalidate rights of municipal utilities or regulated transmission companies (easements to be defined in vacation decree)
- Municipal right to close by ordinance/resolution - written notice, public recordation – rights to reopen
- Property owners can petition district court to close or reopen public way or easement – public notice - hearing

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OK “Simplification of Land Titles Act”**OKS § 16-61 et seq. [Conveyances]****§ 16-71. Marketable record title defined.**

...an unbroken chain of title of record to any interest in land for thirty (30) years or more...

§ 16-78. Definitions.

(a) "Marketable record title" means a title of record as indicated in Section 71 of this title, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in Section 73 of this title.

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OK “Simplification of Land Titles Act”**OKS § 16-61 et seq. [Conveyances]****§ 16-72. Title subject to certain interests and defects.**

Such marketable record title shall be subject to:

(e) The exceptions stated in Section 76 of this title... as to easements and interests in the nature of easements, and rights granted, reserved or excepted by instruments creating such easements or interests...

§ 16-76. Exceptions to application of act...

(a) [§ 71- § 80 shall not apply to bar or extinguish any easement or interest in the nature of an easement]

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Summarizing the Act for easements

- Unrecorded easements can be extinguished by nonuse and prescription but there is not a statutory provision automatically terminating unrecorded easements after 15 years.
- An express recorded easement is not extinguished merely by 15 years of nonuse.

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Scope of easement use

- What is reasonable?
- Exclusive and non-exclusive uses of easements
- Incidental uses
- Location and width

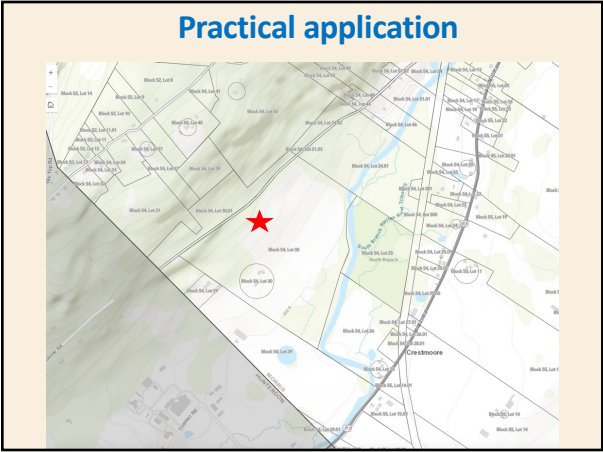
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Rodgers v. Vilsack

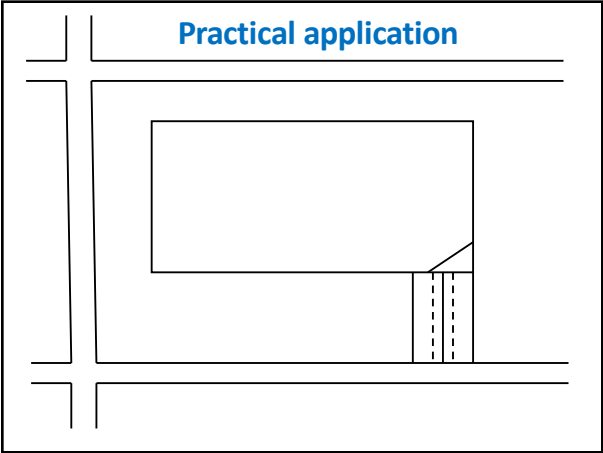
US Dist. Ct., Eastern Dist. of MO,
Eastern Div., July 2015

- A claim that easement "scope creep" has encroached on title

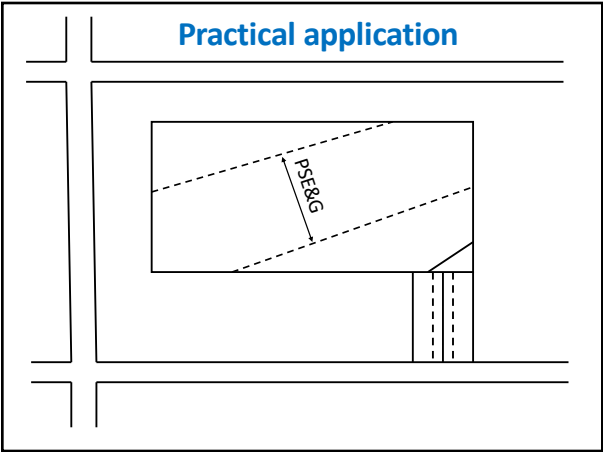
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Dolan v. City of Tigard

512 US 374, Supreme Ct. of the US., 1994

- What is the required degree of connection between the exactions imposed by the city and the projected impacts of the proposed development?
