

# **Bond Case Briefs**

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## **EASEMENTS - ALASKA**

### **Windel v. Matanuska-Susitna Borough**

**Supreme Court of Alaska - October 8, 2021 - P.3d - 2021 WL 4697717**

Landowners sued borough, challenging the validity of easements that crossed their property to give access to neighboring residences.

The Superior Court dismissed most of the claims on res judicata grounds, granted borough's motions for summary judgment or judgment on the pleadings, and, following bench trial, entered judgment for borough on claim that borough violated landowners' due process rights by towing their truck from disputed roadway. Landowners appealed.

On rehearing, the Supreme Court held that:

- Privity requirement of res judicata was met;
- Borough could treat easement as one acquired by donation, rather than by dedication;
- Permit application did not establish that borough could not grant a construction permit to neighbor who was not an adjoining landowner to road;
- Borough's act in towing landowners' pickup truck from road did not violate landowners' due process rights; and
- Award of enhanced attorney's fees was an appropriate exercise of discretion.

Borough could treat easement as one acquired by donation, rather than by dedication, such that it could be acquired simply with borough manager's approval and no further procedure was necessary; acquisition by dedication and acquisition by donation were similarly described in the borough code and were not further defined, the donators' grant of a right of way in exchange for nominal consideration could be categorized as either or both, and the borough's interpretation of the undefined terms in its ordinance was a reasonable one consistent with the statutory grant of broad authority over planning and land use.