

# Railroads & Title Insurance Issues



Dave Lawson, Fidelity National Title Group

# Title - currently or formerly in a Railroad?

- What's the true nature of their ownership?
- What was first, the railroad or the Patent?

# 4 possible sequences:

- Patent to private party and later deed to RR
- Condemnation by RR (always subject to reversion!)
- Federal grant to RR first, and later Patent to private party without mentioning the ROW
- Federal grant to RR first and later Patent to RR without mentioning the ROW

# LOOKING FOR CLUES: Is the ROW a pre-patent federal grant?

- Usually no ROW deed - but not always (*a patent to the RR doesn't count*)
- Privately deeded ROW: usually 100 feet wide
- Federal grant ROW: usually 200, 400 or 500 feet wide
- RR in use prior to patent
  - *Information sources: Google, historylink, city history websites*

Pre-Patent ROW followed  
by later patent to RR:

Fee simple title to most of  
the Section, but NOT to  
the prior granted ROW.

# Interpretation of ROW ownership granted by U.S.

- Limited fee subject to reversion if pre-1871 grant
- Easement if post-1871 grant

- Not based on date of ROW construction, but based on date of original federal grant of the right to construct the railroad line

- NPRR 1864
- UPRR 1875

- RR ROW is viewed in federal law as a public transportation corridor
- But Federal reversion regulation is different from street vacation



- 1903 NPRR v. Townsend:  
RR rights are limited fee
- 1922 legislation - 43 U.S.C.  
Chapter 12, Section 912
- Abandonment only by "Act of  
Congress" or determination by  
"court of competent  
jurisdiction"

# WHO DOES TITLE REVERT TO?

1. That portion embraced within a public highway within *one year after abandonment* vests in the governmental entity establishing the highway (WA statute includes trails as public highway)

# WHO DOES TITLE REVERT TO?

2. If within municipal corporate limits at the time of abandonment, vests in municipality.

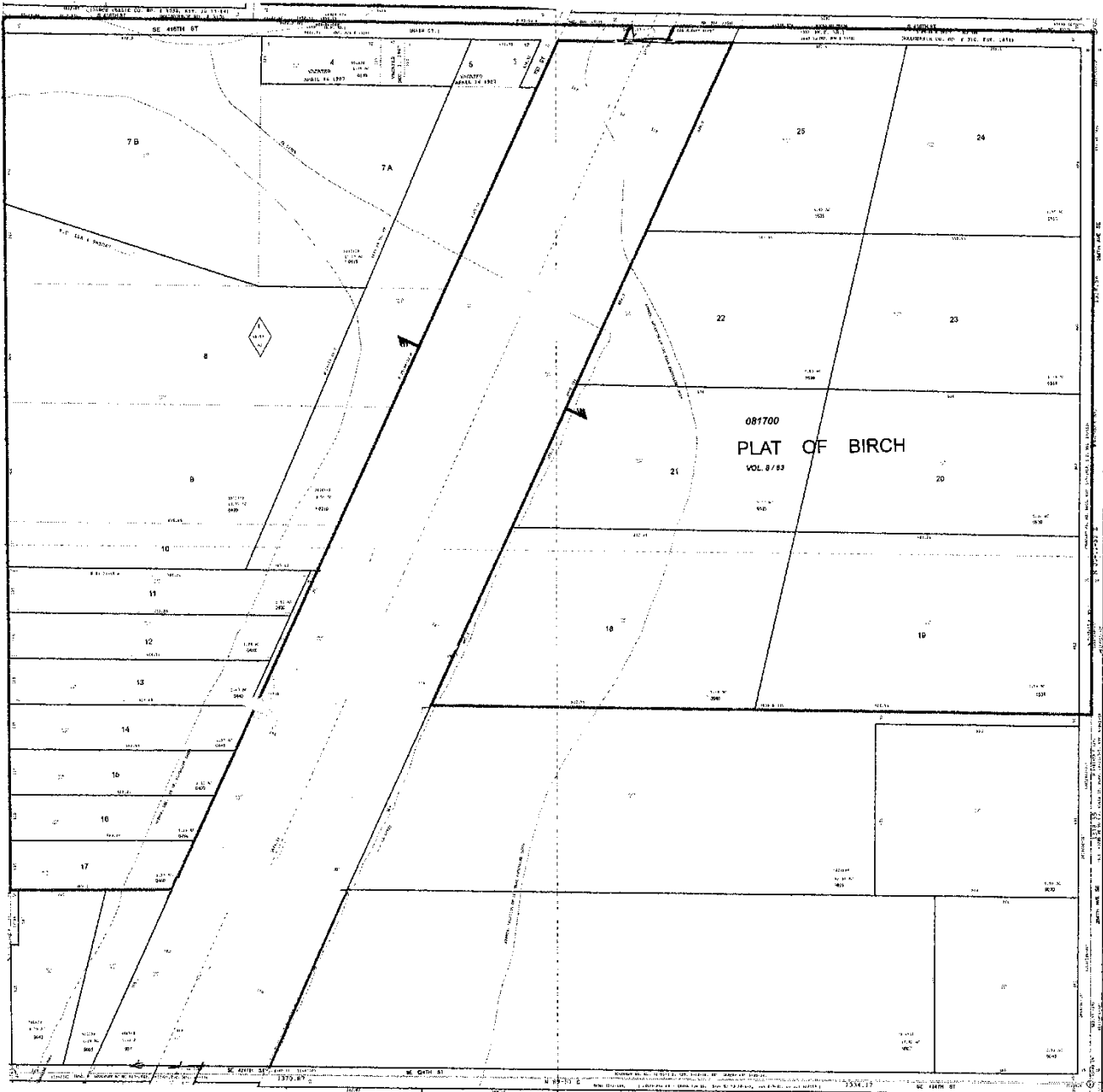
# WHO DOES TITLE REVERT TO?

3. To U.S. if still unpatented,  
OR if patented, to patentee or  
their successors (subject to  
interpretation of deeds to  
abutting lands)

\*\* It doesn't matter that the  
patent didn't disclose the ROW

City of Buckley v. Burlington  
Northern  
(in Pierce County)

- Resolved poorly worded federal code 43 U.S.C. Chapter 12, Section 912
- Title vested in City



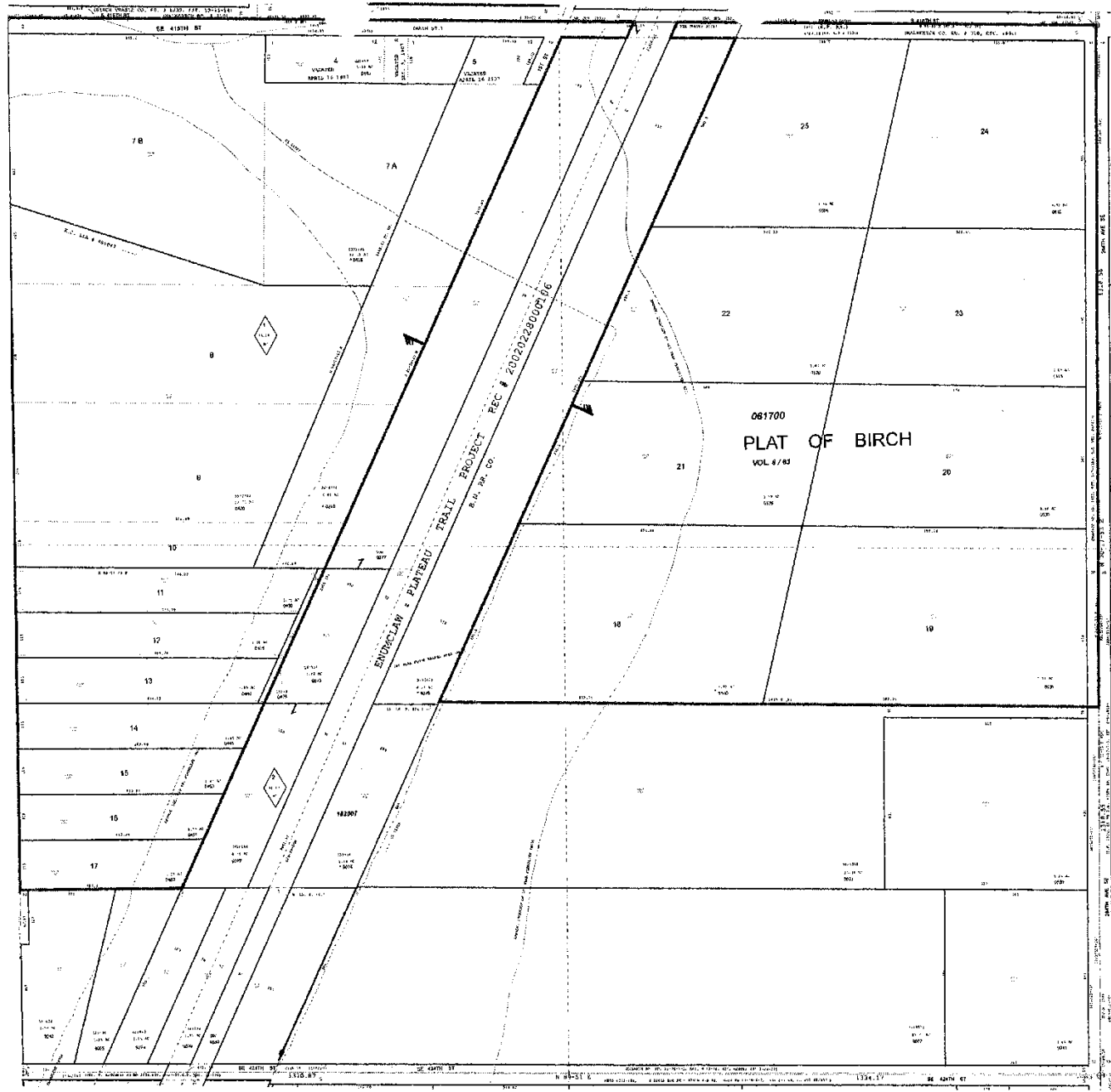
# King County v. Burlington Northern

- NPRR Federal grant 400 foot ROW
- NPRR patent
- Pipe Easement to City of Tacoma
- ICC authorized RR abandonment - 1982
- Deed to City of Tacoma
- Deeds by City to abutting owners

- King County trail planning 10+ years later - 1993
- King County sued City, RR & abutting owners



- Same ROW as in City of Buckley!!
- Pierce County court lacked jurisdiction in King County
- Abandonment didn't occur until "court of competent jurisdiction" determined it
- Many expensive title claims
- County agreed to limit trail width, deeded excess to insureds



# AVISTA v. WOLFE, et al

- 1955: agreement to abandon
- 1958: QCD - RR to county for Hwy
- 2004: County sold excess ROW, kept 60 foot Hwy strip
- 2005: ROW area platted
- Neighbor on West sued for West  $\frac{1}{2}$  ROW
- Abandonment not final until court ruled
- County only had 60 foot Hwy reversion under federal law
- Deed from RR to city failed

# RAILBANKING

- Sale of ROW w/o abandonment.
- Preserving future railroad use under federal law while allowing temporary alternate uses - usually recreational trails

## Beres v. U.S.

### U.S. Court of Federal Claims

- Use of ROW after railbanking for public recreational trail exceeded rights under federal grant and limited deeds.
- Plaintiffs may proceed w/ actions for 5<sup>th</sup> Amendment issues - taking without due compensation.

# PRIVATELY DEEDED ROW

- Find your vesting deed! Don't assume title in a railroad.
- Look for "blanket" deeds between RR's without legals
- Does the deed have express or implied reversionary provisions?
- Is a deed for a right of way or a strip of land for railroad purposes an easement or fee?

# LET'S SUE OVER IT!

- Long line of court decisions dealing with deeds and plat provisions.
- Brown v. State: Is a deed for a RR purpose fee or easement?  
But wasn't all RR ROW acquired for a purpose???
- Rules established (*not unanimous*).
- Expect continuing disputes of deeds to RR's.

# Brown v. State - Interpretation of

Deed to RR:

- (1) Convey a strip of land?
- (2) Limit use to a specific purpose?
- (3) Convey "right of way", not strip?
- (4) Grant only the privilege of constructing, operating, or maintaining a railroad?
- (5) Contain a reversionary clause?



# Brown v. State - Interpretation of

## Deed to RR:

- (6) Did deed contain habendum clause? (to have and to hold for\_\_)
- (7) Monetary consideration - substantial or nominal?
- (8) Any other issues suggested by the deed language?
- (9) Circumstances surrounding deed execution? Off record intent?
- (10) Subsequent conduct of parties?

Does a deed to adjoining land include reversionary rights?

- Land "except ROW"? - YES
- That portion of \_\_\_ lying easterly of the ROW? - YES
- Metes & bounds tied to ROW? ("cut-off description) - NO

# Can a RR grant an easement?

- Limited fee title from U.S. - yes if not inconsistent with RR use
- Easement from U.S. - no unless necessary for RR use
- Fee title from private party - yes if not inconsistent with RR use
- Fee title subject to reversion - maybe?
- Easement deed from private party - no unless necessary for RR use

Can a RR convey surplus strips along the edge of a ROW?

- Not within federal grant ROW (except for public highway)
- OK within privately deeded ROW? BUT subject to reversion claims or assertion RR had only an easement.
- Don't forget subdivision and boundary line adjustment issues. RR is not exempt!!!

# RR CROSSING RIGHTS

- Any reservation in original deed?
- RR normally only grants a Permit - unrecorded, personal, not assignable.
- A Permit is not sufficient for policy access coverage.
- RR may not be able to grant an easement - if violation of federal restrictions (not consistent w/ railroad purpose).
- High speed train use in future may require limited, controlled crossings

# Exception language?

Check with your underwriter!

- Notwithstanding the Covered Risks in the policy, the insurance coverage for lack of a right of access to and from the Land is limited to the access allowed in \_\_\_ (*identify existing permit to the insured, not former owner*), subject to the terms and provisions thereof.
- Notwithstanding the Covered Risks in the policy, the insurance coverage for lack of a right of access to and from the Land is limited to the access allowed in any permit which the owner of the adjoining railroad right of way (or former railroad right of way) may issue, and subject to the terms and provisions thereof.

# Railroad Mortgages

- Usually no legal description - Posted to name only?
- Encumbers future ROW acquisitions, lines of merged RR's?
- Encumbers stations, warehouses, etc.
- BNSF - no escrow partial payoff will occur - BNSF will guarantee release by letter.

# Active BNSF Mortgages:

- Northern Pacific "General Lien Mortgage - 11/10/1896 (now BNSF, Inc.)
- Burlington Inc. "Consolidated Mortgage" - 3/2/1970 (now BNSF, Inc.)
- *Note: NPRR "Prior Lien Mortgage" 11/10/1896 was released in 1996*
- *Note: Great Northern "Gold Bond Mortgage" 1/1/1921 was released in 2003*



# Railroad real estate taxes

- General real estate taxes are collected state-wide as "Operating Property" (RR: interstate utility).
- Your county might have a "master account" without specific descriptions.
- Only special charges are billed to a local property account.
- Leased areas may be locally taxed.

# KEY POINTS

- Federal ROW grant land cannot be sold by RR to private parties.
- Almost all deeds to RR's are open to interpretation.
- Abutters are not the only ones with reversionary rights.
- Abandonment does not occur with removal of rail trackage