



Ready for the Defense

Who Owns the Street, Right-of-Way: Dedication & Acceptance

THIS MONTH'S COLUMN involves a recent Appellate Court case resolving a dispute between a landowner and a city over who owned a 33-foot strip of land shown on a 1926 plat of subdivision as "Winnetka Avenue" in then unincorporated Cook County. The 33-foot strip of land was claimed by the City of Rolling Meadows to have been dedicated to and accepted by the City for public use.

The Appellate Court affirmed the trial court, Circuit Court of Cook County, finding there had never been a "statutory dedication" or a "common law dedication" in the first place — hence, there could be no acceptance by the City. (*Bigelow v. City of Rolling Meadows*, 372 Ill.App.3d 60, 865 N.E.2d 221 (1st Dist. 2007)).

The most frequent situation that arises involving who owns a road, right-of-way, sidewalk, etc., is when an accident occurs and suit is filed against a local public entity. For instance, where an automobile accident occurs on a road, as in the Supreme Court case of *Warzynski v. Village of Dolton*, 61 Ill.2d 475, 338 N.E.2d 25 (1975). In *Warzynski*, plaintiff Pamela Warzynski was a passenger in a car driven by Martin Novak which turned onto an unpaved street and struck a sewer cover. She sustained injuries and sued the Village of Dolton and recovered a \$20,000 judgment.

The street in question was part of a residential subdivision under construction. The Village of Dolton had a policy of accepting the dedication of streets by the developer only when the streets were fully developed and in compliance with Village standards. The Village had not accepted the street in question and, therefore, ownership and maintenance responsibility rested with the developer and not the Village.

The Supreme Court in *Warzynski* reversed the judgment, finding that maintenance of the street was the responsibility of the private owners because the Village had not accepted the dedication. The Court set out the test used to determine

when a local public entity assumes ownership and maintenance responsibility as follows:

'A municipal corporation cannot, by the mere making and recording of a plat by a property owner, be required to accept the public places dedicated to it thereby. The dedicator cannot in that way impose upon the public authorities the burden of caring for the street and alleys included in the subdivision of a property, nor can the municipality be required to open and improve such streets or be held liable for damages occasioned by reason of their unsafe condition until it has actually accepted such streets ... The public authorities have a right to determine whether or not they will accept a tract purported to be dedicated as a road for a public highway as a charge upon the municipality for the maintenance thereof, and until they have so accepted the public way the road or street does not become a public thoroughfare. ... A municipality may accept a part of the streets shown upon a plat and reject a part of the streets, or as to a particular street it may accept a part and reject the remainder of the same street. (61 Ill.2d at 480-81, 338 N.E.2d at 29).

The Supreme Court noted that where there has been a proper dedication (the property owner records a plat and the plat shows/marks/designates certain

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portions to a public entity), acceptance of the offer of dedication by the public entity can be by official acknowledgment or undertaking maintenance on or improvement of the road or exercising control over the road.

The *Bigelow* Case — No Dedication

The *Bigelow* case involved a somewhat confusing history. In 1926, the plat on which the 33-foot strip appeared showed it as “Winnetka Avenue,” but it was located in unincorporated Cook County and, in 1961, was annexed to the City of Rolling Meadows (although the Appellate Court noted it was not entirely clear whether the annexation included this location). In 1992, the city passed an ordinance annexing the property and called it the “dedicated Winnetka Avenue” and “dedicated right-of-way Winnetka Avenue.”

In February 2003, the plaintiffs, Perry Bigelow and The Bigelow Group, wrote the Mayor of Rolling Meadows stating that as legal owners of the 33-foot strip of land, they revoked any offer of dedication made by the 1926 plat.

The Appellate Court held that there had never been a proper dedication, statutory or common law, and, therefore, there could be no acceptance by the City and the plaintiffs were declared the owners of the 33-foot strip.

No Statutory Dedication

The Appellate Court looked to the Plat Act (765 ILCS 205/3) requiring a dedication offer of land to the public be marked on the plat as granted to the public for a public purpose and name the public entity. Stating the test for a “statutory dedication,” the *Bigelow* Court said:

‘In order to effect a statutory dedication, the provisions of the Plat Act must be fully complied with, and the plat must clearly indicate a donation to the public of the real estate in question.’ In addition, a statutory dedication requires an ascertainable grantee to take title. ... To determine whether there is a statutory dedication, courts are limited to an examination of the plat and the marks and notations appearing on the plat. (372 Ill.App.3d at 64-65, 865 N.E.2d at 225-26).

The plat did show a designation of “Winnetka Avenue,” but there were no notes or marks showing intent to dedicate it as a public street:

In this case, although the Subject Property was designated as Winnetka Avenue, there were no marks or notations on the

plat evidencing an intent to dedicate the Property for use by the public. Although we recognize that most roads are public, there is no prohibition against private streets. Where the subdivision was located not within the boundaries of a municipality, but in unincorporated Cook County, we will not assume dedication in the absence of such evidence. Accordingly, we hold that there was no statutory dedication. Because there was no dedication, we need not determine whether there was acceptance. (372 Ill.App.3d at 66-67, 865 N.E.2d at 227).

No Common Law Dedication

The *Bigelow* Court then considered whether there had been proof of a “common law dedication” and set out the test as follows:

For a common-law dedication to be effective, there must be: (1) an intention to dedicate the property for public use; (2) acceptance by the public; and (3) unequivocal evidence of the first two elements. (372 Ill.App.3d at 67, 865 N.E.2d at 227).

The Court held that intent of the property owner-donor to dedicate the property must be clear, unequivocal and unambiguous and the plat certainly was not clear as to intent:

The intent to dedicate ‘may be manifested by a formal dedication or by acts of the donor from which the intent may be so fairly presumed as to equitably estop the donor from denying a donative intent.’ ‘Proof of any act by the dedicator that evidences an intention to dedicate must be clear, unequivocal, and unambiguous.’ (372 Ill.App.3d at 67, 865 N.E.2d at 228).

Conclusion

This issue of ownership and maintenance responsibility for a road, especially with respect to some old roads, triggers this “dedication” and “acceptance” analysis. Perhaps, the old adage: “get it in writing” or “put it in writing” is advisable in a public entity’s “acceptance” of an “offer of dedication.”