

Dedication of Private Streets – Reality or an Impossible Dream –

Condominiums and Homeowners Associations often have what may be called streets which are a part of the association. The streets may have a standard street configuration. They may have a non-standard configuration. These streets are private because they do not conform with municipal standards that existed at the time they were built, or because the agreement to maintain them by the association was a trade-off with the developer for some other features such as higher density. The streets may not actually be streets as that term is understood by a municipality. More often they are hybrids. They may be narrower than municipally approved streets. They may not have curbs or gutters. They may not have the same composition as an approved street, either in terms of subsurface materials and specifications or surface materials and specifications. They may be driveways, aprons, or access roads. They may include parking portions.

DEDICATION

Generally, the rationale as to why a street was not dedicated is unimportant in any attempt to secure dedication. That general rule may not apply if dedication was initially contemplated by the municipality, or if the municipality takes action either initially or at some point in time that would constitute an implied dedication.

There are at least two types of street dedication. One is an implied dedication. The second is formal dedication.

Implied Dedication

An implied dedication occurs when a municipality voluntarily undertakes obligations normally associated with public streets. If a municipality repairs a street, repairs gutters or curbs, performs street cleaning or snow removal without some type of written agreement or reservation of rights, it may have created an implied dedication. The more public type functions which are performed with respect to the street, the more probable a dedication will have occurred. The longer the period of time over which a municipality performs these functions, the more likely it is that an implied dedication will have occurred. An implied dedication is just that. It is implied. There is nothing formal or technical initially. Municipalities should be encouraged, if at all possible, to perform one or more of these functions in hope that, if they do, their activity will create an implied dedication.



The municipality, at any time, may conclude that it does not wish to continue with whatever activities had been performed. Should that occur or should the association wish to formalize the municipality's obligations, the association will have to request dedication and will have to do so based

upon the implied dedication activities. The municipality may simply agree and allow formal dedication. It may do so with limitations on the dedication which it negotiates. If it does not agree, and if the association wishes to pursue a confirmation that an implied dedication has occurred, the association must file suit for a court adjudication on the issue of dedication. The determination as to whether a dedication has occurred will be based upon the facts.

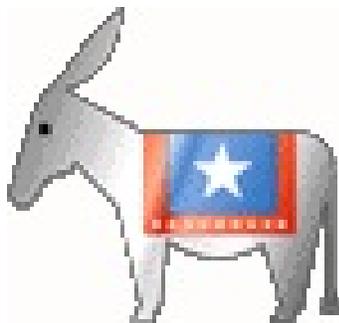
Voluntary Dedication

A voluntary dedication occurs when an association makes request of a municipality for dedication of the streets. Dedication will only be accomplished if the association complies in all respects with the requirements of the municipality, or negotiates some agreement. After the municipality agrees to dedication and all municipal requirements are met, public hearings are held and concluded, and a dedication agreement is signed and recorded along with recordation of any plats identifying the portions to be dedicated.

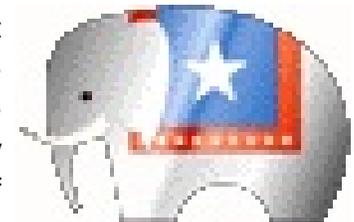
PAYING TAXES NOT BASIS FOR DEDICATION

Associations, boards and unit owners oftentimes believe that they can secure dedication because they pay taxes to the municipality and/or because they are owners. Payment of taxes is not considered a basis for dedication. Motor fuel tax payments, which are used by the state and the municipality for local roads and local road improvement, have no impact the on dedication issue.

POLITICAL CLIMATE



An important factor, which is often overlooked, and which can have significant impact upon the ability to dedicate, is the political climate in the municipality. If a large number of associations simultaneously pursue street dedication, the membership of those associations could constitute a political force in the community. If elections are near, then the members of the



association can exert political pressure on candidates. The association boards and members can act as a coalition, have meetings with candidates and extract promises for street dedication, possibly on terms that are acceptable to associations. Historically the political process and use of the political process has been the most important factor in securing dedication of streets in various municipalities.

ACTIVITIES NORMALLY INVOLVED IN FORMAL STREET DEDICATION

The first step is generally to secure a preliminary agreement on interest in dedication from the municipality. If the municipality has no interest whatsoever, it serves no purpose to proceed unless the association wishes to make a public record of their request, or unless it believes that it can use the public forum to force an implied dedication. If there is an agreement or willingness, generally, the municipality will require the association to fill out an application. It will be an application similar to an application for permit, zoning or planning prepared or filed by a developer

for a subdivision. This document gives the village engineers and staff written information and material, in preliminary form, which allows them to proceed with an evaluation. The village, just as in any other zoning or planning matter, will then have its staff review and make preliminary recommendations.

The recommendations can extend from agreeing or disagreeing to dedication, in whole or in part, to specifics regarding the dedication process such as what is to be dedicated and what, if any, requirements the association must meet prior to dedication. Generally, municipalities will accept streets that do not conform in terms of width, curbs and gutters. Some will require additional width or, at the least, curbs and gutters.

Many will mandate that the street must be brought up to current village standards before dedication. This may include removing the entire street material surface and subsurface portions and replacing them with all new portions which meet the municipal code requirements. In effect, the association would be rebuilding the street in order to conform with current requirements. Obviously, the cost is significant.

CONCESSIONS

Municipalities may require some type of concession in order to accept dedication, in addition to repairing the road to some level which is acceptable. Often-times, because of street width, the villages claim that their snow plows cannot go through the streets, turn around or do an appropriate job. They refuse to either rent or buy smaller plows. Many street dedication agreements mandate that the association continue to provide snow plowing; although, the municipality will accept dedication for other purposes. In some instances, this tradeoff will allow the association to dedicate the street without significant street improvements. In some instances the association can negotiate and secure snow plowing rebates from the municipality if the association performs the snow plowing.

UPGRADING OF SEWERS

There may be sewers and/or other utilities that are part of the street or under the street. The municipality may require the sewers to be upgraded at the same time as the street and will then accept responsibility for and allow dedication of the sewers as well as the street. This should be negotiated and actively pursued as sewer maintenance can be very costly for associations.



PUBLIC HEARING

If agreement is reached and the upgrading work is done, then a public hearing, generally first before the plan commission and then before the village board, is necessary. The village board must vote on and approve dedication and direct the president to sign any necessary dedication agreements,



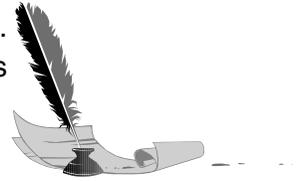
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and plats, and have those documents recorded.

Generally, the municipalities require that plats showing streets and plats showing sewers be provided by the association at the association's expense. Additionally, any legal fees incurred by the association are its expense. In some instances the municipality requires that staff costs and even village legal fees be paid by the association as a part of the cost for the dedication.

Clearly, there are many obstacles in pursuing street dedication. It can become very time consuming and very expensive for an association. Short-term cost, however, generally will be far less than long-term cost of keeping the streets, sewers or other utilities. Associations must balance the short-term costs versus the long-term advantages. Even though preliminarily the costs may seem high and may be high, associations should pursue dedication, at least in order to try and preliminarily ascertain whether there is any prospect and/or whether it can be accomplished at a price and in a time frame that is reasonable for the association. There are instances where associations have been able to dedicate streets and utilities with little or no cost. The opportunity should not be passed up because the preliminary analysis would suggest that the municipality would not cooperate.



A GENERAL PRACTICE LAW FIRM CONCENTRATING IN **CONDOMINIUM & HOMEOWNERS ASSOCIATION LAW** INCLUDING:

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- Rules Preparation
- Covenant and Rules Enforcement
- Assessment Collection
- Covenants - explanation/application
- Contract Preparation and Enforcement
- Condominium Property Act - Explanation/Application
- Common Interest Community Association Act Explanation/Application
- Owner or Contractor Suits
- Labor and Union Issues in Associations
- Lien Preparation and Foreclosure
- Developer Turnover, Disputes and Suits
- Unit Owner Bankruptcy and Mortgage Foreclosure
- Real Estate Sales and Closings
- Real Estate Tax Reduction for all units/properties