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CONDOMINIUMS: Dedication of streets

DEDICATION: Condominiums

To dedicate a private street in a condominium, the master deed of which has been recorded, to public use, it is necessary to obtain the consent of all co-owners, mortgagees, and other persons interested in the condominium.

Opinion No. 4933

February 17, 1976.

Honorable John Bennett
State Representative
The Capitol
Lansing, Michigan 48901

You have requested my opinion on a situation which has arisen in Wayne County concerning the Bradbury Parkhomes Condominium located in Plymouth Township. Based on the information which you have provided, as well as supplemental information obtained from the attorney for Plymouth Township, it appears that the developers of the condominium as well as the owners of units within the condominium desire to have the main street within the condominium, Newporte Street, dedicated for public use. It further appears that a master deed for the condominium has already been recorded pursuant to § 7 of the Horizontal Real Property Act, 1963 PA 229, as amended, MCLA 559.7; MSA 26.50(7).

In their attempts to have Newporte Street dedicated for public use, the developers approached the Wayne County Road Commission and were informed by the Road Commission that the Commission would only accept for dedication roads platted according to the provisions of the Subdivision Control Act, 1967 PA 288, as amended, MCLA 560.101 *et seq*; MSA 26.430(101) *et seq*. After being so informed, the developers prepared a preliminary plat of the condominium development which divided the development into two lots, one lot on the northeast side of Newporte Street, and the other lot on the southwest side of the street.

This plat was rejected by the Wayne County Plat Board on September 17, 1973.

In light of the above facts, two questions must be answered in order to determine whether or not Newporte Street may be dedicated to the public use and, if so, to determine the method which must be used to accomplish the dedication:

- (1) Can a developer of a condominium development dedicate the main street in the condominium development to the public use even though condominiums are excluded from the Subdivision Control Act, 1967 PA 288, as amended, MCLA 560.101 *et seq*; MSA 26.430(101) *et seq*, by reason of § 2(n) of the Horizontal Real Property Act, as amended, 1963 PA 229, MCLA 559.2(n); MSA 26.50(2)(n)?
- (2) If the condominium master deed has already been recorded and the condominium subdivision plan has been filed with and approved by the Michigan Department of Commerce, and apartments

in the condominium development have already been sold, can the developers still dedicate a street to the public use?

At the outset it should be noted that there is nothing in the Subdivision Control Act which prohibits or prevents the dedication of lands not found within platted subdivisions to the public use. Dedication has been defined as:

“. . . an appropriation of land to some public use, made by the owner of the fee, and accepted for such use by or in behalf of the public. . . .” [*Alton v Meeuwenberg*, 108 Mich 629, 634; 66 NW 571 (1896)]

See also: *Elias Bros, Inc v City of Hazel Park*, 1 Mich App 30; 133 NW2d 206 (1965).

Two types of dedication have been recognized in the State of Michigan, statutory dedication and common law dedication. Both modes of dedication have been recognized by the courts of Michigan and have been held to be valid. In the case of *Gunn v Delhi Twp*, 8 Mich App 278; 154 NW2d 598 (1967), the Michigan Court of Appeals discussed both forms of dedication and the differences between them:

“Generically, a dedication is ‘an appropriation of land to some public use, accepted for such use by or in behalf of the public.’ *Clark v. City of Grand Rapids* (1952), 334 Mich 646, 656, 657. Two types of dedications have been specifically recognized in this State, statutory dedication and common-law dedication; the distinction was explicitly approved by the Supreme Court prior to the turn of the century. *Alton v. Meeuwenberg* (1896), 108 Mich 629. Statutory dedication may result from compliance with the plat act of 1929, CL 1948, §§ 560.1-560.80, as amended (Stat Ann 1953 Rev and Stat Ann 1965 Cum Supp §§ 26.431-26.511) [repealed and replaced by the Subdivision Control Act, 1967 PA 288]. The definition of common-law dedication was given in *Alton v Meeuwenberg, supra*, at p 636, and has been incorporated without substantial change into CL 1948, § 221.20, *supra*, quoted in footnote 1.

“The distinction must be stated because of the difference in result hinging on the type of dedication. The traditional position was stated in *Village of Grandville v. Jenison* (1890), 84 Mich 54, 65:

“The effect of a dedication under the statute has been to vest the fee in the county, in trust for the municipality intended to be benefited, whereas, at common law, the act of dedication created only an easement in the public.” [8 Mich App at 282]

Other cases which have recognized the validity of common law dedications in Michigan are *DeWitt v Roscommon County Road Commission*, 45 Mich App 579; 207 NW2d 209 (1973); *Chene v City of Detroit*, 262 Mich 253; 247 NW 172 (1933), sustained on rehearing 263 Mich 512; 248 NW 884 (1933); *Sharkey v City of Petoskey*, 30 Mich App 640; 186 NW2d 744 (1971); *City of Grand Rapids v. Grand Rapids*, 10 Mich App 100; 161 NW2d 100 (1968).

While both common law and statutory dedications have been recognized as valid in the State of Michigan, and while there is nothing in the Subdivi-

sion Control Act which precludes the dedication of land excluded from the provisions of that Act, a necessary prerequisite to either statutory or common-law dedication is *acceptance* by the relevant governmental body. Although Section 253(1) of the Subdivision Control Act seems to provide that the mere recording of a plat accomplishes dedication automatically and "acceptance thus occurs as a matter of law", in *Salzer v State Treasurer*, 48 Mich App 34; 209 NW2d 849 (1973), the Michigan Court of Appeals held that mere approval of a plat by a township does not constitute formal acceptance of a dedication. The *Salzer* court refused to follow an earlier decision of another panel of the Court of Appeals, *Bangle v State Treasurer*, 34 Mich App 287; 191 NW2d 160 (1971), arriving at a contrary result. The conflict in decisions has yet to be resolved by Michigan's Supreme Court.

The material accompanying your opinion request indicates that the Wayne County Road Commission has refused to accept the dedication of Newporte Street unless a statutory dedication is made pursuant to the provisions of the Subdivision Control Act, *supra*. It should be pointed out that this requirement of statutory dedication is not a requirement under the Subdivision Control Act, *supra*, but is instead a requirement of the Wayne County Road Commission. As was noted above, a governmental body is not required to accept a proposed dedication merely because it is offered. Because a statutory dedication vests a fee in the governmental body whereas a common-law dedication vests only an easement in that body, *Gunn v Delhi Twp, supra*, the requirement of the Wayne County Road Commission cannot be said to be an unreasonable condition for acceptance. Furthermore, because the Subdivision Control Act, *supra*, and the platting of land are designed to further the orderly development of land, the requirement of a platting dedication is justifiable.

The answer to the first question is that the Subdivision Control Act, *supra*, does not compel the platting of lands in order to effectuate a dedication of a street to the public use. Furthermore, there is nothing in the Subdivision Control Act, *supra*, which prevents the dedication of streets in condominium developments even though condominiums are excluded from the provisions of the Subdivision Control Act, *supra*. The requirement that Newporte Street be dedicated by means of a plat is not a requirement under the Subdivision Control Act, *supra*, but is instead a condition imposed by the Wayne County Road Commission as a prerequisite to its acceptance of the dedication.

From the information which you supplied along with your opinion request as well as the supplemental information obtained from the attorney for Plymouth Township, it is apparent that the difficulties being encountered in dedicating Newporte Street to public use are not directly related to the fact that a platting requirement had been imposed. Rather, the problems are due to the fact that a master deed and accompanying condominium subdivision plan has already been filed with the Michigan Department of Commerce and has been approved by that department. Furthermore, the master deed has been recorded. Both the subdivision plan and the master deed show Newporte Street to be a part of the condominium, thereby making the street a "general common element" of the condominium as defined in Section 2(h) of the Horizontal Real Property Act, *supra*.

Your opinion request reveals that units within the condominium have already been sold. As a result, all of the owners of the units have a right to share with the other co-owners of the common elements of the condominium project, such as Newporte Street, and have a legal interest in these common elements, 1963 PA 229, § 6, MCLA 559.6; MSA 26.50(6).

The minutes of the Wayne County Plat Board meeting of September 17, 1973 indicate that the Plat Board refused to approve the proposed plat of the subdivision because the condominium subdivision plan, which was already in existence at that time, showed Newporte Street to be part of the condominium development. The Plat Board recommended that the developers file an amended master deed excluding Newporte Street from the deed.

It is clear that the action of the Wayne County Plat Board and the recommendation made by the Board are correct. The Plat Board is not authorized to accept a plat unless the plat is made by all of the owners of the land in question, 1967 PA 288, § 144, MCLA 560.144; MSA 26.430(144). Since units within the condominium development have already been sold, and since the master deed and condominium subdivision plan for Bradbury Parkhomes show Newporte Street to be part of the condominium, all of the owners of units within the condominium must be considered to be proprietors as defined in § 102(h) of the Subdivision Control Act, 1967 PA 288, MCLA 560.102(h); MSA 26.430(102)(h).

Because all of the owners of units in the condominium are proprietors within the meaning of the Subdivision Control Act, *supra*, and are co-owners of Newporte Street, the plat cannot be approved unless the co-owners all agree. Furthermore, a dedication of Newporte Street cannot be made unless all those who hold title to the street agree to the dedication, *Diamond Match Co v Village of Ontonagon*, 72 Mich 249; 40 NW 448 (1888); *Kirchen v Remenga*, 291 Mich 94; 288 NW 344 (1939).

Since a master deed and condominium subdivision plan which show Newporte Street to be part of the condominium are already in existence, no plat can be filed until the master deed and accompanying plan are amended. Administrative Code 1970-71, AACS, R 451.1373, sets forth the following requirements for the amendment of master deeds:

“Amendment of a master deed shall require the written consent of all co-owners, mortgagees and other persons interested in the condominium project. Where the developer reserves in the master deed the right to amend the master deed for a proper and stated purpose, the administrator may approve such amendment without consent of all the co-owners, mortgagees and other interested persons. Such purposes may include, but not be limited to, modification of percentages of value, reassignment of limited common elements, merger of sectional condominium developments or corrections of minor errors in the master deed.”

To dedicate Newporte Street to the public use consent of all the co-owners, mortgagees and other persons interested in the condominium project must be

obtained for amendment of the master deed.* The master deed should be amended to reflect the fact that it is the intent of all those with an interest in the street to dedicate that street to the public for public use. After the deed has been so amended, then approval of the proposed plat may be sought.

It is my opinion therefore that since the condominium master deed has already been approved and recorded and units within the condominium development have already been sold, the developers cannot dedicate Newporte Street to the public use without first obtaining an amendment of the master deed.

FRANK J. KELLEY,
Attorney General.

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VETERANS: Licensing and regulatory statutes

LICENSES AND PERMITS: Veterans

CONSTITUTION OF MICHIGAN: art 4, § 25

A veteran of the armed forces who completes a portion of practical experience required for examination for a license prior to January 1, 1973 may complete his requirement for practical experience after that date if the failure to complete his practical experience resulted from service in the armed forces.

Although enactment of a statute may affect an existing act, if the statute is complete in itself and does not confuse or mislead, it does not violate Const 1963, art 4, § 25, which prohibits enactment of a statute that alters or amends a prior act without publishing the section altered or amended at length.

Opinion No. 4955

February 19, 1976.

Jack C. Sharpe
Administrative Secretary
Board of Registration for
Land Surveyors
1008 South Washington Avenue
Lansing, Michigan 48926

You have asked for my opinion on the following questions:

1. Is 1946 1st Ex Sess PA 27, as amended by 1975 PA 193¹ applicable

* If the developer has reserved in the master deed the right to amend the master deed for purposes of dedication of land to the public for public use, then the written consent of all co-owners, mortgagees and other persons interested in the condominium project may not be necessary.

¹ MCLA 35.581 *et seq.*; MSA 4.1485(1) *et seq.* As originally enacted 1946 1st Ex Sess PA 27, protected the work and study performed by applicants for license for any trade, occupation or profession prior to induction into the armed forces; the act referred to service in the armed forces during World War II and for a period of 6 months after formal declaration of peace. By enactment of 1975 PA 193, the legislature extended the coverage to include veterans of the armed forces during any period of war or emergency condition so as to include the Vietnam era.