

CHAPTER XIII

RECORDED PLATS



STANDARD 13.1

TITLE CONVEYED BY DEDICATION OF LAND FOR PUBLIC USE IN RECORDED PLAT

STANDARD: ACCEPTANCE OF A DEDICATION OF LAND DESIGNATED FOR PUBLIC USE IN A PLAT RECORDED IN COMPLIANCE WITH THE LAND DIVISION ACT CONVEYS A QUALIFIED FEE TITLE IN THE PARCELS OF LAND DESIGNATED FOR PUBLIC USE TO THE MUNICIPALITY IN WHICH THE PLATED LAND IS LOCATED, IN TRUST ONLY FOR THE USES AND PURPOSES DESIGNATED.

Problem A: The plat of Whiteacres Subdivision, recorded in compliance with the Land Division Act, identified part of Whiteacres as Oak Street and specifically dedicated it for use by the public. Center City, the municipality in which Whiteacres was located, accepted the public dedication of Oak Street. After the acceptance, the proprietor of Whiteacres executed and recorded a deed purporting to convey Oak Street to John Doe. Did John Doe acquire marketable title to Oak Street?

Answer: No.

Problem B: Same facts as in Problem A, except that after accepting the public dedication of Oak Street, Center City executed and recorded a deed purporting to convey to ABC Oil Co. all of the oil and gas under Oak Street. Did ABC Oil Co. obtain any interest in the oil and gas under Oak Street?

Answer: No. By accepting the dedication of Oak Street, Center City acquired only a qualified fee, which did not include any interest in the oil or gas. See, Comment B.

Authorities: MCL 560.253. *Edison Illuminating Co. v Mich*, 200 Mich 114, 166 NW 944 (1918); *Eyde Brothers Development Co v Roscommon County Road Commission*, 161 Mich App 654, 411 NW2d 814 (1987); *Kalkaska v Shell Oil Co*, 433 Mich 348, 446 NW2d 91 (1989).

Comment A: Before 1887 the Plat Act referred to a public dedication as being a sufficient conveyance to vest title in trust in the county in which the platted land was located. Act 309 of 1887 revised the Act to provide that a public dedication vested title in trust in the city or village in which the platted land was located or, if the land was not in a city or village, then in the township in which the land was located. Since 1887 there has been no substantive change in the vesting-of-title provisions. The Plat Act has been known as the Land Division Act since March 31, 1997, the effective date of 1996 P.A. 591. MCL 560.101.

Comment B: The fee acquired by a municipality in land designated for public use in a plat is of a qualified nature. Michigan courts have variously described the qualified nature of the fee as: “such a title as would enable the public authorities to devote the land to all the public uses contemplated,” *County of Wayne v Miller*, 31 Mich 447, 448 (1875); “a fee in trust for the public,” *Edison Illuminating Co. v Misch*, 200 Mich 114, 122, 166 NW 944, 947 (1918); “a fee which has a qualification annexed to it,” *West Michigan Park Association v Conservation Department*, 2 Mich App 254, 263, 139 NW2d 758, 762 (1966); and lacking “the usual rights of a proprietor,” *Kalkaska v Shell Oil Co.*, 433 Mich 348, 357, 446 NW2d 91, 95 (1989).

Note: See Standard 13.2 regarding acceptance of a dedication of platted land for public use.

STANDARD 13.2

ACCEPTANCE OF DEDICATION OF LAND FOR PUBLIC USE IN RECORDED PLAT

STANDARD: ACCEPTANCE OF A DEDICATION OF LAND FOR PUBLIC USE IN A RECORDED PLAT OCCURS WHEN, BEFORE WITHDRAWAL OF THE DEDICATION AND WITHIN A REASONABLE TIME AFTER THE RECORDING OF THE PLAT:

- (A) THE MUNICIPALITY IN WHICH THE LAND IS LOCATED ADOPTS A RESOLUTION OR ORDINANCE ACCEPTING THE DEDICATION;**
- (B) THE MUNICIPALITY IN WHICH THE LAND IS LOCATED EXPENDS PUBLIC FUNDS FOR MAINTENANCE OR IMPROVEMENT OF THE LAND; OR**
- (C) AS TO LAND DEDICATED FOR USES OTHER THAN STREETS, ROADS, AND ALLEYS, THERE IS PUBLIC USE OF THE LAND FOR THE SPECIFIED PURPOSE.**

ACCEPTANCE OF A DEDICATION OF LAND FOR PUBLIC USE IS PRESUMED TO OCCUR 10 YEARS AFTER THE PLAT IS FIRST RECORDED, UNLESS THE PRESUMPTION IS REBUTTED BY COMPETENT EVIDENCE.

Problem A: The recorded plat of Whiteacres Subdivision located in the City of Acorn dedicated the “streets” in the plat to the use of the public. Within a reasonable time after the plat was first recorded, the Acorn City Commission adopted a resolution accepting the dedication of the streets in Whiteacres. Was there an acceptance of the dedication?

Answer: Yes.

Problem B: The recorded plat of Whiteacres Subdivision located in the City of Acorn dedicated the “streets” within the plat to the use of the public. Although the Acorn City Commission did not adopt a resolution accepting the dedication, after the recording of the plat the City of Acorn

expended public funds to maintain and improve the streets located in the plat. Was there an acceptance of the dedication?

Answer: Yes.

Problem C: The recorded plat of Whiteacres Subdivision located in the City of Acorn dedicated the “parks” within the plat to the use of the public. Although the Acorn City Commission did not adopt a resolution accepting the dedication and the City of Acorn did not expend public funds to maintain or improve the parks located in the plat, after the recording of the plat the public began using the parks in the plat. Was there an acceptance of the dedication?

Answer: Yes.

Authorities: Problem A: *In re Vacation of Cara Avenue*, 350 Mich 283, 86 NW2d 319 (1957) and *Rice v Clare County Road Commission*, 346 Mich 658, 78 NW2d 651 (1956).

Problem B: *Hooker v City of Grosse Pointe*, 328 Mich 621, 44 NW2d 134 (1950).

Problem C: *West Michigan Park Assn v Conservation Department*, 2 Mich App 254, 139 NW2d 758 (1966); *State Highway Commission v St Joseph Township*, 48 Mich App 230, 210 NW2d 251 (1973); and *Village of Lakewood Club v Rozek*, 51 Mich App 602, 215 NW2d 780 (1974).

Comment A: This Standard is limited to what constitutes acceptance of a dedication of land for public use. The Standard does not address withdrawal of a dedication before acceptance, what constitutes withdrawal of a dedication, or when an offer of dedication can be withdrawn. For a discussion of these issues, see *Kraus v Michigan Department of Commerce*, 451 Mich 420, 547 NW2d 870 (1996) and *Vivian v Roscommon County Road Commission*, 433 Mich 511, 446 NW2d 161 (1989).

Comment B: This Standard does not address the question of when a dedication to the public has lapsed due to the public’s failure to accept the dedication within a reasonable time after the recording of the plat. Compare *Shewchuck v City of Cheboygan*, 372 Mich 110, 125 NW2d 273 (1963) and *Marx v Department of Commerce*, 220 Mich App 66, 558 NW2d 460 (1996), holding that dedications had lapsed, with *In re*

Vacation of Cara Avenue, 350 Mich 283, 86 NW2d 319 (1957) and *Ackerman v Spring Lake Township*, 12 Mich App 498, 163 NW2d 230 (1968), in which dedications to the public were deemed continuing until sufficient actions were taken to withdraw the offers.

Comment C: This Standard does not address whether mere use by the public of a platted street, road or alley dedicated to the public is sufficient to constitute acceptance of the dedication. In *Regan v St. Joseph County Conservation Club*, 5 Mich App 686, 147 NW2d 738 (1967), the court held that mere use of a platted public street is insufficient for acceptance of the dedication. See also, *Village of Lakewood Club v Rozek*, 51 Mich App 602, 215 NW2d 780 (1974). However, in *Rice v Clare County Road Commission*, 346 Mich 658, 78 NW2d 651 (1956), the court stated that acceptance of a platted public street may occur formally, by resolution, or informally, by expenditure of public funds for repair, improvement or other control of the street, or through use of the street by the public. See also, *Eyde Brothers Development Co. v Roscommon County Road Commission*, 161 Mich App 654, 664; 411 NW2d 814, 818 (1987).

Note: See Standard 13.3 concerning dedication of land for other than public use.

Caveat: MCL 560.255b (effective December 22, 1978) provides that 10 years after a plat is first recorded, land dedicated for the use of the public in the plat will be presumed to have been accepted unless the presumption is rebutted. The effect of this provision on plats recorded before December 22, 1978 is uncertain. See, *Vivian v Roscommon County Road Commission*, 433 Mich 511, 446 NW2d 161 (1989).

Even if the public does not accept a dedication for public use within a reasonable time after the dedication, the title to the land so dedicated may remain subject to the rights of lot owners to use the dedicated land for the purposes designated if lots in the plat have been conveyed with reference to the recorded plat. See, *Schurtz v Wescott*, 286 Mich 691, 282 NW 870 (1938) and *Kirchen v Remenga*, 291 Mich 94, 288 NW 344 (1939).

STANDARD 13.3

DEDICATION OF LAND IN RECORDED PLAT FOR OTHER THAN PUBLIC USE

STANDARD: A DEDICATION OF LAND IN A RECORDED PLAT FOR THE USE OR BENEFIT OF OWNERS OF LOTS IN THE PLAT BECOMES IRREVOCABLE UPON THE CONVEYANCE OF ANY LOT OR PORTION OF A LOT WITH REFERENCE TO THE RECORDED PLAT.

Problem: The recorded plat of Whiteacres Subdivision included a dedication of certain land designated as a “park” for the use and benefit of the owners of lots in the plat. Later, Lot 5 of the plat was conveyed with reference to the recorded plat. Did the dedication of the “park” for the use and benefit of the owners of lots in Whiteacres become irrevocable upon conveyance of Lot 5 of Whiteacres Subdivision with reference to the recorded plat?

Answer: Yes.

Authorities: MCL 560.253. *Kirchen v Remenga*, 291 Mich 94, 288 NW 344 (1939); *Little v Hirschman*, 469 Mich 553, 677 NW2d 319 (2004); and *Martin v Beldean*, 469 Mich 547, 677 NW2d 312 (2004).

Comment: The Land Division Act, MCL 560.101 *et seq.*, effective January 1, 1968, expressly authorizes dedications of land for private as well as public use. The acceptance of a dedication for other than public use in a plat recorded after December 31, 1967 operates to convey fee simple title to the dedicated land to the named donees of the dedication “for their use for the purposes therein expressed.” MCL 560.253(1). See, *Martin v Beldean*, 469 Mich 547, 677 NW2d 312 (2004). The Michigan Supreme Court has held that dedications for other than public use in plats recorded before the effective date of the Land Division Act are valid. The plat acts in effect before the Land Division Act did not contain a provision for the vesting of fee simple title to land dedicated for other than public use. Accordingly, before January 1, 1968, the effective date of the Land Division Act, the donees of private dedications acquired an easement in or right to use the dedicated land for the stated purpose, but not fee simple title to the land. See, *Little v Hirschman*, 469 Mich 553, 667 NW2d 319 (2004).

STANDARD 13.4

VACATION OF STREETS AND ALLEYS IN RECORDED PLAT

STANDARD: AFTER ENTRY OF A JUDGMENT OF A CIRCUIT COURT VACATING ALL OR PART OF A STREET OR ALLEY WHICH WAS DEDICATED AS PART OF A RECORDED PLAT, TITLE TO THE VACATED PORTION VESTS IN THE OWNERS OF THE ABUTTING LOTS IN THE PLAT AND BECOMES PART OF THE ABUTTING LOTS. IF A DEDICATED STREET OR ALLEY IN A RECORDED PLAT IS VACATED AND THE STREET OR ALLEY IS ABUTTED ON OPPOSITE SIDES BY LOTS IN THE SAME PLAT, THE CENTER LINE OF THE VACATED STREET OR ALLEY BECOMES THE BOUNDARY LINE BETWEEN THE LOTS. IF THE VACATED PORTION OF A DEDICATED STREET OR ALLEY IS ABUTTED ON ONLY ONE SIDE BY LOTS IN THE PLAT, ALL OF THE VACATED PORTION BECOMES PART OF THE ABUTTING LOTS. A DESCRIPTION OF A LOT BY ITS LOT NUMBER INCLUDES ANY PORTION OF A VACATED STREET OR ALLEY THAT HAS BECOME PART OF THE LOT.

Problem A: Lot 16 of a recorded plat measures 50 feet from north to south, and is abutted on the south by a dedicated 60-foot-wide street, south of which lies another lot in the same plat. The circuit court entered a judgment vacating the street in its entirety. Later, Mary Doe, the owner of Lot 16, conveyed “Lot 16” to Richard Roe. Did Roe acquire marketable title to Lot 16 including the abutting north half of the vacated street?

Answer: Yes. After the vacation, title to the north half of the vacated street vested in Mary Doe, as the owner of Lot 16, and the north half of the vacated street became part of Lot 16. Thus, the description “Lot 16” is equivalent to “Lot 16 including the north one-half of the vacated street abutting the south side of Lot 16.”

Problem B: Same facts as in Problem A, except that the deed described “the south 40 feet of Lot 16.” Did Roe acquire marketable title to the north 30

feet of the vacated street and the south 10 feet of Lot 16 as originally platted?

Answer: Yes. After the vacation of the street, the north 30 feet of Lot 16 became part of Lot 16 so that Lot 16 had a north and south dimension of 80 feet. Accordingly, the south 40 feet of Lot 16 is measured from the center of the vacated street and thus includes the north 30 feet of the vacated street and the south 10 feet of the original Lot 16.

Problem C: Same facts as in Problem A, except that the deed described “the south one-half of Lot 16.” Did Roe acquire marketable title to the south half of Lot 16 as originally platted?

Answer: No. After vacation of the street, the north 30 feet of the street became part of Lot 16 so that Lot 16 had a north and south dimension of 80 feet. Roe acquired marketable title to the south half of the 80 feet and Doe retained title to the north 40 feet of the original Lot 16.

Problem D: Same facts as in Problem A, except that the circuit court judgment vacated only the north 10 feet of the street. Later, Mary Doe conveyed the north half of Lot 16 to Richard Roe. Did Roe acquire marketable title to the north 30 feet of Lot 16 as originally platted?

Answer: Yes. After vacation of the north 10 feet of the street, the vacated portion of the street became part of Lot 16 so that Lot 16 had a north and south dimension of 60 feet.

Problem E: Lot 21 of a recorded plat measures 150 feet from east to west and is abutted on the west by a dedicated 20-foot-wide alley, the west line of which is the west line of the plat. The circuit court entered a judgment vacating the alley in its entirety. Later, Mary Doe, the owner of Lot 21, conveyed the west 85 feet of Lot 21 to Richard Roe. Did Mary Doe retain title to the east 85 feet of Lot 21 as originally platted?

Answer: Yes. Because the vacated alley is abutted on only one side by a lot in the same plat, all of the adjoining part of the vacated alley became part of Lot 21. Accordingly, the east and west dimension of Lot 21 became 170 feet and the west 85 feet conveyed to Roe is measured from the west line of the vacated alley.

Authorities: MCL 560.227a. *Gazley v Koepke*, 195 Mich 509, 162 NW 85 (1917); *Valoppi v Detroit Engineering & Machine Co*, 339 Mich 674, 645 NW2d 884 (1954).

Comment: This Standard applies to vacation of streets and alleys in recorded plats accomplished through judicial proceedings and, before January 1, 1968, to vacations accomplished by legislative or administrative bodies having jurisdiction even in the absence of concurring judicial proceedings. 1839 P.A. 91 §6, as first amended by 1867 P.A. 189 and under subsequent statutes; 1857 CL 1137, 1871 CL 1349, How. 1478, 1915 CL 3355 (repealed by 1929 P.A. 172, §80, 1929 CL 13277 effective August 28, 1929). 1929 P.A. 172, §§65, 66, 1929 CL 13262, 13263, 1948 CL 560.65, 560.66 (repealed by 1967 P.A. 288, §293, being MCL 560.293, effective January 1, 1968).

This Standard does not address: (1) the status of title to real property within that part of a street or alley vacated by a legislative or administrative body on or after January 1, 1968, the effective date of the Land Division Act, MCL 560.101 *et seq.*, without concurring judicial proceedings; or (2) the effect of vacation of a street or alley not located in a recorded plat.

Caveat: *Nelson v Roscommon County Road Commission*, 117 Mich App 125, 323 NW2d 621 (1982), suggests that the vacation of a platted street may not affect the right to use the street by lot owners not made parties to the vacation action.

