

Presented:

The Land Use Conference: Planning, Law and Regulation

March 27-28, 2014
Austin, Texas

Disposition of City-Owned Real Property

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Municipal Sales of Real Property

I. First, a refresher on how cities *acquire* real property (land, personal property that is permanently affixed to land, and ownership interests in land).

A. Legal process.

1. A city may acquire real property by *purchase*, either by a negotiated purchase or through eminent domain. It is also possible, though less common, for a city to acquire property by *gift*.

2. A city may also acquire real property, especially streets and easements, through *dedication*, in which the owner expressly or impliedly offers the property for public use, and the city expressly or impliedly accepts the offer.

a. Express offer – An owner may convey a real property interest *expressly* by executing and delivering a deed or easement instrument to the city. In addition, recording a subdivision plat is an *express offer* to the public of the rights-of-way and easements shown on the plat as being offered for public use. The offer on the plat binds the developer (and the property owners who buy their property in the subdivision with reference to the plat) but the city is not required to accept and develop the items offered by the plat. See Tex. Loc. Gov't Code § 212.001(a).

b. Implied offer – An offer of dedication may be *implied* by the existence of a street, easement, or other public use on an owner's property. The doctrine of implied dedication is similar to adverse possession, but adverse possession is a statutory doctrine and implied dedication derives from common law. The analysis is: Considering all of the facts and circumstances, did the owner of the property intend to dedicate this portion of the property to public use? The intention may be implied by the owner's not objecting to the use. If litigated, it is a fact question that must be proved by clear and convincing evidence. *City of Waco v. Fenter*, 132 S.W.2d 636 (Civ. App – Waco 1939, writ ref'd). If a right-of-way or easement is deemed to have been impliedly dedicated, the property dedicated is not just the "beaten path," but includes a reasonable area on either side for construction, repairs, utilities, and other actions reasonably associated with the dedicated property interest. *Allen v. Keeling*, 613 S.W.2d 253 (Tex. 1981).

c. Acceptance – The governing body of the city or county may always *expressly* accept a dedication by passing an ordinance, order or similar measure. When property is being purchased in fee, for example, a City Council will often expressly authorize and approve a Purchase and Sale Agreement or take some other action to approve the transaction. With platted streets and easements, the city is deemed to have accepted the offer of dedication by installing the street or utilities, or accepting them into the city's inventory after a third party installs them. With implied dedication, the city is

deemed to have implied accepted the (implied) offer by the use of the property by the public or on its behalf.

The dedication of a street right-of-way by plat includes not only the surface street but all of the rights that are normally associated with a street (parking, light fixtures above, water lines and other utilities below, fire hydrants, etc.). A city may be install those items without being obligated to further develop the surface street. *Riley v. Davidson*, 196 S.W.2d 557 (Tex. Civ. App – Galveston 1946, writ ref'd n.r.e.). Accepting the greater part of the length of an offered street may constitute acceptance of the whole of the street as dedicated. *Town of Palm Valley v. Johnson*, 17 S.W.3d 281. (Tex. Civ. App. – Corpus Christi 2000, rev. den).

B. Nature of the city's interest.

Absent a clear indication to the contrary, the public's property interest in a street or alley is that of a right-of-way easement. *City of Mission v. Popplewell*, 294 S.W.2d 712 (Tex. 1956). The owners of the property abutting the street typically own a fee interest in the property underlying the right-of-way, encumbered by the public's right-of-way easement. *Riley v. Davidson*, 196 S.W.2d 557 (Tex. Civ. App – Galveston 1946, writ ref'd n.r.e.). If the easement is removed, the property owners then automatically own the unencumbered fee to the centerline.

II. How cities may dispose of real property.

A. *Abandonment* – If real property interest been offered to the public and accepted, it cannot be sold until it has been *abandoned* – that is, until the governing body of the governmental entity makes a determination that the property is no longer needed for public use. If property was dedicated to the public by plat but not accepted, no action by the governmental entity is needed (*i.e.*, the right-of-way or easement may be “platted away”) although some practitioners may want an official statement of nonacceptance.

B. *Sale* – Generally, real property owned by cities must be sold by (1) sealed-bid sale under Texas Local Government Code Section 272.001, (2) public auction under Section 253.008, or (3) through a broker and multiple-listing service under Section 253.014. We will review sealed-bid sales first, as that method has historically been most common.

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First appeared as part of the conference materials for the

18th Annual The Land Use Conference session

"Disposition of City-Owned Real Property"