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# Navigating the Legal Requirements of Paper Streets



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A “paper street” is a street marked on a map or plat recorded with a municipality that shows the existence of an intended public right of way. The “paper street,” however, has not yet been physically improved on the location marked on the map. Thus, the street exists solely as lines on a map. Additionally, for purposes of this article, streets that have been improved in accordance with filed maps or plats but which are not yet accepted as public streets by the municipality are also considered “paper streets.”

**How do streets come to be?** For the most part, streets in New Jersey come in to existence one of two ways: by municipal action or by private dedication.<sup>i</sup> In the former, a municipality sets forth its intentions to lay out a street and then acquires the necessary land for the right of way. For this article, however, we are most interested in the latter method of creating streets.

**By Municipal Action** New Jersey General Statute 40:67-1 et. seq., empowers municipalities to establish by ordinance the boundaries of municipal streets within its jurisdiction. The municipality would provide for the financing of such a project within the ordinance as well, generally via bonding or capital improvement funds. The same statute also empowers a municipality to vacate the same such streets.



*Paper streets may exist solely as lines on a map or they may be streets that have been improved in accordance with filed maps or plats but which are not yet accepted as public streets by the municipality.*

can be enough to constitute an implied dedication. Of course, there is room for error and plenty of ambiguity in implied dedication. If a map or description of a deed is unequivocal, the question of whether or not there was an implied dedication is a question of law and left to the court to decide. If, however, whether or not such a dedication was made is equivocal in nature, in which "reasonable minds may differ," the question becomes one to be decided by the trier of fact.

A classic example of implied dedication is when a developer conveys lots with reference to a map upon which the purchaser relies. If the purchaser buys a lot adjacent to a "paper street," they retain an "indefeasible right" to access the easement constituting the right of way to their property, even where the "paper street" has yet to be accepted by the municipality. The street is still in existence as far as the purchaser is concerned. Since the purchaser relies on the map in making his or her purchase, in the absence of an express dedication, it is assumed there was an implied dedication.

It is important to keep in mind that, "generally speaking, ambiguities are resolved against the dedicator and in favor of the public."

**Paper Streets** Once a plat is approved that calls for the creation of streets in the future and a

**By Dedication** Dedication can be defined as "the permanent devotion of private property to a use that concerns the public in its municipal character."<sup>ii</sup> A dedication may be made expressly or impliedly.

Often times, when a developer purchases a large unimproved lot to create a new residential development a subdivision map is approved dividing the property in to smaller lots. New roads are proposed to connect the lots to roads already in existence. Once a municipality approves the developer's plans, the map is filed with the municipality, and potential buyers rely on the map in buying their property. At this point the proposed roads are dedicated to the municipality whether or not they are ever built.

Once land is dedication to a public purpose, the dedication remains in effect until the dedication is either accepted by the municipality or rejected by vacation.<sup>iii</sup> The dedicator cannot revoke the dedication; the dedication may only be revoked by the consent of the municipality. Once the land is dedicated, the governing body has the right to accept the land at any time no matter how much time has passed since the initial dedication.<sup>iv</sup> The public rights in dedication may only be terminated by municipal action.

**Express Dedication** Express dedication is ordinarily found by deed of grant or by a written or oral declaration of intention. In this instance, it is unequivocal that the dedicator intended to make a dedication to the municipality.

**Implied Dedication** Implied dedication finds intent to dedicate based on the actions of the dedicator rather than in any written or oral expression. Action

purchaser relies on the map, a “paper street” is created and the planned street becomes dedicated. It is immaterial if the street has been constructed or not, the municipality has a right to accept the dedication. Even if the street is actually built, if the municipality does not accept it, the street still remains a “paper street.”

A municipality can accept a dedication, vacate a dedication or simply do nothing. It is in those instances where no action is taken that the dedication remains a “paper street.” Sometimes a municipality intends to accept a street but is waiting to do so formally until the street conforms to municipal construction standards. Other times, a municipality may not have decided it wants to accept the street. Prior to acceptance, the municipality has no duties or responsibilities to the street and the public has no rights to the “paper street.” Therefore, a municipality may find it beneficial to choose not to accept the dedication, and leave the “paper street” in its unaccepted form.

Properties adjacent to a “paper street,” however, maintain an additional perpetual and indefeasible private easement over the dedicated street to access their property.

**Acceptance, Non-Acceptance, Vacation** Following dedication, a municipality can as mentioned above do one of three things. It can accept the dedication, vacate it or take no action, essentially “non-acceptance.” A municipality can accept the dedication in a number of ways, and has a statutorily based method for vacating.

**Acceptance by Ordinance** Most often a municipality accepts a “paper street” by ordinance or resolution. This formally accepts the previously made offer of dedication. In most cases, the municipality is accepting the street easement that was created by the developer’s subdivision of a larger lot and assuming responsibility for it.

**Acceptance by Municipal Conduct** Municipal conduct can constitute acceptance of a dedicated “paper street.” In *Borough of Milford v. Arnold*, the municipality accepted the dedication by installing stop signs, lighting, a road sign, a water line, and a sewer line. Additionally, the municipality added to the street network, cleared the right of way, and undertook routine road upkeep. The municipal engineer included the street on a road review and tour, and relied on the road for over 30 years to access a sewer plant. Despite never passing an ordinance or resolution accepting the dedication, the conduct of the municipality towards the “paper street” in question indicated a positive acceptance on the part of the municipality.

Another example of municipal conduct accepting a dedication occurred in *Arnold v. City of Orange*, when the city exercised its municipal authority in the construction of a public sewer in a dedicated street and connected the sewer with the municipality’s general system of sewers. The court viewed the connection, at the municipality’s expense, as acceptance of the dedication of the street.

Municipal acceptance by conduct can also be found by public usage of a dedicated way. If the public has actual enjoyment of a dedicated area for such an amount of time that the public would be “materially affected” if public access were revoked, acceptance of the dedication is recognized. Factors to consider include if stores have been located on a property and the public accesses them through dedicated land, or if the public uses dedicated land for parking purposes or access to other public areas.

**Acceptance by Statute** New Jersey General Statute 40:67-23.7 mandates that municipalities shall accept for dedication those streets that meet certain municipal requirements. Despite the language of the statute, courts appear wary to enforce it. Courts strictly read the provision, particularly the phrase “conform to municipal specifications for public roads and streets.” *Township of North Brunswick v. Renaissance Village* held that the dedicated streets must conform, not “effectively conform” or “may conform in the future.”

Municipalities are able to set specific guidelines for the standards of roads prior to acceptance such

as grading or width. Courts will require all municipal standards to be met before mandating a street to be accepted. Courts have routinely taken this position due to the underlying principle of dedication and acceptance. As noted in 1857 in *Holmes v. Jersey City* “an individual cannot, at his pleasure, create public highways for his own benefit upon his own land, and impose upon the public the burden of maintaining them...or subject it to liability.” Exercising its acceptance discretion, a municipality can decide what is in the best interest of the public instead of being beholden to private actions.

**Non-Acceptance** During the period between dedication and acceptance or vacation the land in question is a “paper street.” Since the municipality has not accepted the land the fee simple interest in the property remains with the property with which the dedicated “paper street” runs. The owner of the property can do whatever he or she desires with the property so long as the owner does not interfere with the municipality’s right to accept the dedication at a future date.

While the owner is estopped from any attempt to retract dedication, at the same time the public acquires no rights to use the “paper street” prior to acceptance. As such, the public is also not burdened by the streets and is not subject to any duties stemming from the dedication.

**Vacation** To vacate a “paper street” a municipality follows New Jersey General Statute 40:67-19. The statute calls for the municipality to find that the public would be better served by releasing the dedicated land. The procedure laid out in N.J.S. 40:49-6 requires the municipality to publicize, file public notice of its intention and hold a public hearing on the matter. Particular notice is required for those persons whose property will be affected by the municipality’s action to vacate the right of way. Vacating does not necessarily impair the rights of those living along the vacated street.

Generally, a dedicated street gives a municipality an easement over the land the street is constructed upon, meaning the adjacent landowners maintain the fee ownership. If a dedication is unclear as to whether the dedication was an easement or fee simple, it is presumed to be an easement. Thus, if a municipality vacates a street, the lot adjacent to the street will generally regain possession of the portion of the, “street immediately adjacent to the vacated street.” As a general rule, it is assumed that the property interest runs to the centerline of the street.

After vacation, the easement on the street continues to exist in a new form. Lot owners who use the street to access their property gain a complimentary easement to use the vacated street. While the municipality no longer has an option to accept the street and the public no longer has any potential right to use it, particular landowners adjacent to the street continue to hold their own private easement and can use the vacated “paper street.”

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i Pane, 34 N. J. Practice, Local Government Law, §6.31.

ii *Velasco v. Goldman Builders, Inc.*, 93 N.J. Super. 123, 133 (App. Div. 1966) (quoting *Black v. Cent. R.R. Co.*, 85 N.J.L. 197, 202 (E. & A.1913)).

iii *Borough of Milford v. Arnold*, 382 N.J. Super. 83 (L. 2005) (citing *Cunningham and Tischler, ‘Dedication of Land in New Jersey,’* 15 Rutgers L.Rev. 377. 384-5 (1961)).

iv *Highway Holding Co. v. Yara Engineering Corp.*, 22 N.J. 119, 126 (1956) (citing *Trustees of the M.E. Church v. Hoboken*, 33 N.J.L. 13 (Sup. Ct. 1868) and *Packer v. Woodbury*, 3 N.J. Misc. 661 (Sup. Ct. 1925)).

v *Velasco*, 93 N.J. Super. at 133 (citing *Cunningham and Tischler, ‘Dedication of Land in New Jersey,’* 15 Rutgers L.Rev. 377. 384-5 (1961)).

vi *Id.*

vii *Point Pleasant Manor Building Co. v. Brown*, 42 N.J. Super. 297, 303 (App. Div. 1956) (citing *City of Camden v. McAndrews & Forbes Co.*, 85 N.J.L. 260, 267 (E. & A. 1913)).

- viii Id. (citing *Finger v. Doane*, 98 N.J.L. 635, 636 (Sup.Ct. 1923)).
- ix *State of New Jersey by Commissioner of Transportation v. Birch*, 115 N.J. Super. 457, 464 (1971) (citing *Long Branch v. Toovey*, 104 N.J.L. 335, 337 (E. & A. 1927) and *Cunningham and Tischler, 'Dedication of Land in New Jersey,'* 15 Rutgers L.Rev. 377. 384-5 (1961)).
- x *Haven Homes, Inc. v. Raritan Township*, 19 N.J. 239, 246 (1955) (citing *City of Russell v. Russell County B. & L. Ass'n*, 154 Kan. 154 (Sup. Ct.1941)).
- xi *United New Jersey R.R. & Canal Co. v. Crucible Steel Co.*, 85 N.J. Eq. 7, 28 (Ch. 1915).
- xii *Commissioner of Transportation*, 115 N.J. Super. at 464 (1971) (citing *Long Branch*, 104 N.J.L. at 337 (E. & A. 1927) and *Cunningham and Tischler, 'Dedication of Land in New Jersey,'* 15 Rutgers L.Rev. 377. 384-5 (1961)).
- xiii *Velasco*, 93 N.J. Super. 123.
- xiv *Borough of Milford*, 382 N.J. Super. 83.
- xv *Arnold v. City of Orange*, 73 N.J. Eq. 280 (Ch. 1907); unsure as to whether this Arnold is related to the Arnold in the Milford case supra.
- xvi *Kiernan v. Primavera*, 109 N.J. Super. 231, 236-237 (1970) (citing *Cunningham and Tischler, 'Dedication of Land in New Jersey,'* 15 Rutgers L.Rev. 377. 384-5 (1961)).
- xvii *Township of North Brunswick v. Renaissance Village I Condominium Assoc. Inc.*, 2007 WL 174140 (N.J. Super. App. Div.).
- xviii *Holmes v. Jersey City*, 12 N.J. Eq. 299 (1857).
- xix *Darling v. Jersey City*, 73 N.J. Eq. 318, 322 (Ch. 1907).
- xx *State v. Borough of South Amboy*, 57 N.J.L. 252, 259 (1894) and *Atlantic & Suburban R.R. Co. v. State Board of Assessors*, 80 N.J.L. 83, 87 (1910).
- xxi *Highway Holding Co.*, 22 N.J. at 126 (1956) (citing *Vice-Chancellor Van Fleet* in *Dodge v. Pennsylvania R.R. Co.*, 43 N.J. Eq. 351, 357 (Ch. 1887)).

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