From: Eric Pottenger
Sent: Monday, August 26, 2024 11:53 AM
To: Dale Schwieterman; Greg Wilkens
Subject: Fw: Acceptance of Road Right-of-way Dedication
Attachments: ANNEXATION MAP.pdf
ANNEXATION RECORD.pdf
Extracted pages from STONYBROOK - 4-30-24.pdf

FYI - Commissioners cannot accept dedication of right-of-way from an owner within the corporation limits of a municipality. Instead, the county must obtain consent from the municipality prior to performing an improvement extending into or through the corporation.

Eric J. Pottenger
Development / Storm Water Manager
Direct: 513-785-4121 | Cell: 513-678-6325
Butler County Storm Water District
www.stormwaterdistrict.org

Butler County Engineer's Office
www.bceo.org
"Check *out our new website!*"

From: Stephen Wagner <Stephen.Wagner@bcohio.gov>
Sent: Friday, August 23, 2024 12:02 PM
To: Eric Pottenger <PottengerE@bceo.org>
Cc: Michelle Mignery <Michelle.Mignery@bcohio.gov>; Kevin J. Gerrity <Kevin.Gerrity@bcohio.gov>; Patrick R. Oelrich <Patrick.Oelrich@bcohio.gov>
Subject: Acceptance of Road Right-of-way Dedication

You don't often get email from stephen.wagner@bcohio.gov. Learn why this is important

Dear Eric,

Thank you for reaching out to our office with your questions surrounding the Stonybrook development. You indicated that the city has requested the developer give additional right-of-way, by means of fee simple dedication, to the Board of County Commissioners. However, the additional right-of-way is located within the corporation limits of the City of Monroe.

I must advise you that the developer cannot give right-of-way by means of fee simple dedication directly to the Board of County Commissioners over land that is located within the corporation limits of the City of Monroe. The Board of County Commissioners will not be able to accept a dedication of land directly from the developer—that is carved out of the City of Monroe.
Pursuant to O.R.C. Sections 711.06 and 711.07, a proprietor of lots or grounds in a municipal corporation shall convey such platted property by way of conveyance to vest in the municipal corporation. Therefore, the developer cannot circumvent these statutes and directly dedicate land within the municipality to the Board of County Commissioners.

After the platted property is conveyed to the municipal corporation, there are mechanisms to coordinate for the improvement of roads and other lands within the municipality.

For example, O.R.C. 5557.02 ("Road improvement into, within, or through municipal corporation") reads as follows:

> The board of county commissioners may construct a proposed road improvement into, within, or through a municipal corporation, **when the consent of the legislative authority of such municipal corporation has been first obtained**. Such consent shall be evidenced by the proper action of the legislative authority, entered upon its records, and the legislative authority may assume and pay such proportion of the cost of that part of the proposed improvement within the municipal corporation as agreed upon between the board and legislative authority. If no part of the cost of the proposed improvement is assumed by the municipal corporation, no action on its part, other than the giving of the consent above referred to, shall be necessary, and all other proceedings in connection with such improvement shall be conducted in the same manner as though the improvement were situated wholly outside a municipal corporation.

Furthermore, O.R.C. 5557.08 ("Continuous road improvement through municipal corporation consent required") reads as follows:

> The board of county commissioners may repair that portion of a county road extending into or through a municipal corporation, or a part of a county road and a municipal corporation's streets extending into or through a municipal corporation and forming a continuous road improvement, **when the consent of the legislative authority of said municipal corporation has been first obtained, and such consent shall be evidenced by the proper legislation of the legislative authority of the municipal corporation, entered upon its records**.

In *Village of Hicksville v. Lantz*, 153 Ohio St. 421, 41 Ohio Op. 424, 92 N.E.2d 270 (1950), the Ohio Supreme Court stated: "[T]he dedication of property belonging to a municipal corporation to a public use will deprive the municipal corporation of its proprietary interests in that property just as effectively as a similar dedication of

an individual's property would deprive the individual of his rights in and to his property."

Thus, combined, the developer and the Board of County Commissioners cannot annex or carve out land from the municipal corporation (City of Monroe) without the municipal corporation's involvement.

Please let us know if you have any further questions or if you would like to discuss this matter further.

Very respectfully,

Stephen Wagner

From: Kevin J. Gerrity <Kevin.Gerrity@bcohio.gov>
Sent: Monday, August 19, 2024 2:06 PM
To: Stephen Wagner <Stephen.Wagner@bcohio.gov>
Cc: Michelle Mignery <Michelle.Mignery@bcohio.gov>
Subject: FW: Acceptance of Road Right-of-way Dedication

Steve, can you take a look at this issue and lets compare notes?

From: Eric Pottenger <PottengerE@bceo.org>
Sent: Wednesday, August 14, 2024 3:06 PM
To: Kevin J. Gerrity <Kevin.Gerrity@bcohio.gov>
Cc: Michelle Mignery <Michelle.Mignery@bcohio.gov>; Patrick R. Oelrich <Patrick.Oelrich@bcohio.gov>
Subject: Acceptance of Road Right-of-way Dedication

Kevin,

We are coordinating a review of a new residential development in the City of Monroe, along Kyles Station Road between I-75 and Butler-Warren Road. The development is immediately adjacent to Kyle Station Road. The developer of the subdivision is required to construct turn lane improvements, mitigating the developments impact on the public road network.

When the property was annexed in 1978, the proposed corporation limit extended to the north right-of-way line of Kyles Station Road, not to the centerline. Therefore, it's our understanding that Kyles Station is under county jurisdiction.

As part of the development plan for Stonybrook, the City has requested the developer give additional right-of-way, by means of fee simple dedication, to the Board of County Commissioners. While the additional right-of-way follows the

intent of the Butler County Thoroughfare Plan, the land is located within the corporation limits of the City of Monroe.

In reviewing Chapter 711 Plats, it appears the governing authority within a municipal corporation must accept the dedication of right-of-way. In lieu of Monroe, can the Board of County Commissioners accept the dedication of land within a municipal corporation for road purposes? If additional land can be accepted by the Commissioners, is a dedication plat the correct method?

Eric J. Pottenger
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