MEMORANDUM

To: Eddie Arredondo, County Attorney

From: Taylor Becker

Date:

Re: Commissioners Court Authority to Clarify Acceptance of Existing County Road and Accept Additional Subdivision Road

QUESTIONS PRESENTED

1. Whether, under Texas law and Burnet County's subdivision regulations, a road located within a platted subdivision that was dedicated "to the use of the public forever" on a 1983 plat, is labeled "County Road 425," and has been accepted and adopted as such in commissioners court minutes is part of the county road system that the commissioners court may lawfully maintain with public funds, and whether the homeowners' petition to "clarify and affirm" that status has any additional legal effect.
2. Whether, under Texas law and Burnet County's subdivision regulations, the commissioners court may accept another road within the same 1983 subdivision plat as a county road, when that road was likewise dedicated "to the use of the public" on the plat but has not previously been accepted into the county system, and the subdivision homeowners have signed a petition requesting its acceptance.

BRIEF ANSWER

1. Probably yes. The 1983 plat's language dedicating subdivision streets "to the use of the public forever" operates as a formal offer of dedication of those streets, but Texas courts explain that approval and recording of such a plat is only an offer and does not itself make the roads county roads or obligate the county to maintain them. *Commissioners' Court v. Frank Jester Dev. Co.*, 199 S.W.2d 1004, 1007 (Tex. Civ. App.—Dallas 1947, writ ref'd n.r.e.). In addition, Burnet County's subdivision regulations expressly provide that

approval of a plat "shall not be deemed an acceptance of the proposed dedications" and impose no maintenance duty until the commissioners court affirmatively accepts particular streets for county maintenance. Here, the commissioners court has since voted to "accept and adopt" the road as County Road 425, and county road-map guidance through the courts indicates that such acceptance, and any inclusion on a county road map, conclusively evidences the county's right to maintain the road with public funds, even though it does not change fee title. Accordingly, a court is likely to conclude that County Road 425 is part of the county road system for maintenance purposes, and the homeowners' petition to "clarify and affirm" that status primarily serves as evidence of landowner support rather than adding new legal effect to the county's existing public-road claim.

2. Probably yes, if the statutory and county-regulation procedures are followed and the county is willing to accept it. The second road was also expressly dedicated "to the use of the public" on the 1983 plat, which created an offer of dedication that may still be accepted by the county. Under Transportation Code chapter 251, residents of a precinct may apply for a new road or a change in an existing road by petition, and Burnet County's subdivision regulations require that requests for acceptance of subdivision streets be made by written petition, that the roads meet county construction and drainage specifications, and that any street accepted for maintenance by accepted "by order in writing" of the commissioners court in open session. If the petition for the additional subdivision road meets those requirements and the commissioners court issues a specific written order accepting that road for public maintenance, the road is likely to be treated as newly added to the county road system. However, the homeowners' petition itself does not transfer fee title or eliminate the need for any required dedications, deeds, or condemnation. Acceptance,

therefore, would establish public-road and maintenance authority rather than automatically vesting fee-simple ownership in the county.

STATEMENT OF FACTS

Quail Creek Subdivision Sections One and Two were platted in 1983. The recorded plats for both sections contain dedicatory language stating that the trustee and said owner of the lands known now as Quail Creek Subdivision does "hereby dedicate the streets, alleys, and passageways shown hereon to the use of the public forever." *Quail Creek Subdivision, Sections One & Two, Plat*, cabinet 1, p.175A; cabinet 1, p. 196C (Burnet County, Tex. 1983) (on file with Burnet County Clerk). One of the subdivision roads is presently identified as County Road 425. Commissioners court minutes in June and August of 2003 reflect that the court voted to accept and adopt that road as County Road 425. Burnet Cnty., Tex., Comm'rs Ct. Minutes, June 9, 2003, at 37, and Aug. 25, 2003, at 38 (acccpting and adopting County Road 425 as a county road). The property owners now seek two related forms of county action. First, they want the county to clarify and confirm that County Road 425 is properly treated as a county road. Second, they want another road within the same subdivision to be accepted as a county road as well. In support of those requests, the owners have circulated a petition signed by the majority of homeowners in the subdivision. At present, however, no separate right-of-way deed, condemnation judgment, or other instrument expressly conveying fee title in the roadway to the county has been identified.

DISCUSSION

Under Texas law and Burnet County's subdivision regulations, roads shown on a recorded subdivision plat and dedicated to the public are not automatically county roads. A plat dedication is considered merely an offer, and both state authorities and the Burnet County regulations make clear that approval and recording of the plat do not, by themselves, accept street dedications or

impose any duty on the County to maintain them. Instead, the commissioners court must accept the dedication before the road becomes part of the county road system. Here, the plat language is likely sufficient to establish an offer of dedication for both subdivision roads. The remaining questions are whether the commissioners court accepted County Road 425 in 2003 and whether the commissioners court may now accept the additional roadway as a county road by following the same acceptance process and the procedures set out in Burnet County's regulations, including the petition and standard requirements.

I. County Road 425 is likely already part of the county road system because the 1983 plat dedicated subdivision streets to public use and the commissioners court later accepted and adopted that road as County Road 425.

The commissioners court is the central authority for county road matters in Texas. Under Texas Transportation Code § 251.051, the commissioners court shall order that public roads be laid out, opened, discontinued, closed, abandoned, vacated, or altered. Tex. Transp. Code Ann. § 251.051. In this instance, it will likely be found that the 1983 plat language and the later commissioners court minutes support treating County Road 425 as a county road for maintenance purposes.

A. Under Texas road-dedication and county-road statutes, the 1983 plat dedication and the commissioners court's acceptance together likely complete the dedication of County Road 425 as a county road while leaving fee-title questions to be resolved by separate title instruments.

Under Texas Transportation Code § 281.002, a county with a population of 50,000 or fewer may acquire a public interest in a private road by only purchase, condemnation, dedication, or a court's final judgment of adverse possession. Tex. Transp. Code Ann. § 281.002. In this case, dedication must be an explicit voluntary grant for the use of a private road for public purposes and communicated in writing to the commissioners court of the county in which the real property is located. *Id.* § 281.003 (1-2). In furtherance of this, the filing and approval of a plat which

undertakes to dedicate streets and roads does not make them public, since the dedication is a mere offer and the filing of said plat does not constitute an acceptance of the dedication. *Jester*, 199 S.W.2d at 1007. Once the plat was filed and conveyances were made, it amounts to complete and irrevocable dedication of the streets to public use; no formal acceptance of the dedication by the county or other organized representative of the public is necessary. *Taylor v. Cantu*, No. 01-19-00353-CV, 2020 WL 6878729 at *4 (Tex. App.—Houston [1st Dist.] Nov. 24, 2020, no pet.) (mem. op.) (quoting *Coombs v. City of Houston*, 35 S.W.2d 1006, 1068-69 (Tex. Civ. App. 1930)). Accordingly, a county is authorized to maintain roadways in subdivisions if the roads were originally established as public roads by the commissioners court, by prescription, or by dedication and acceptance by the public or local authorities. *Stein v. Killough*, 53 S.W.3d 36, 38-39 (Tex. App.—San Antonio 2001, no pet.) (quoting *Corpus Christi v. McCarver*, 289 S.W.2d 420, 421 (Tex. Civ. App.—San Antonio 1956, writ ref'd n.r.e)).

Express plat dedication, when later accepted through public use or county action, can complete the creation of a public road. In *Stein v. Killough*, the court was willing to treat the dedicated and long-used streets as public roads because the original owner's express plat dedication had been accepted through public use and county involvement, thereby completing a common-law dedication. *Stein*, 53 S.W.3d at 42-43. In that case, the plat in question reflected that the original owner of the land dedicated to the public's use "all streets, alleys, parks, water courses, drains, easements and public places thereon shown for the purpose and consideration therein expressed." *Id.* at 38-39. The court reasoned that since the roads were dedicated to the public by the original property owner and accepted by the public through use, the commissioners court therefore had the authority to approve proposed alterations made to a common-law public road.

In our case, the Quail Creek plat for sections one and two includes language that the owners "do hereby dedicate the streets, alleys and passageways shown hereon to the use of the public forever," which mirrors the dedicatory language at issue in *Stein* and constitutes an express written offer of dedication under chapter 281. *Quail Creek Subdivision, Sections One and Two, Plat*, cabinet 1, p. 175A; cabinet 1, p. 196C (Burnet County, Tex. 1983) (on file with Burnet County Clerk). Language dedicating all roads to the public's use forever, along with the commissioners court's acceptance and adoption of County Road 425, likely constituted express acceptance of the county road and placed it within the county road system. That offer alone did not make every subdivision road a county road, but the commissioners court later voted to accept and adopt one of those streets as County Road 425, recorded in the court's minutes. Burnet Cnty., Tex., Comm'rs Ct. Minutes, June 9, 2003, at 37, and Aug. 25, 2003, at 38 (accepting and adopting County Road 425 as a county road). Express plat dedication plus subsequent commissioners' court acceptance likely completed the dedication for purposes of both common-law and statutory road law and placed County Road 425 within the county road system.

II. The commissioners court may likely accept the additional subdivision road into the county road system, but only by following the statutory and county-regulatory procedures for accepting a public interest in that road rather than relying on the petition alone.

In the case of County Road 425, the 1983 plat language dedicating subdivision streets "to the use of the public forever" supplied the written offer of dedication, and the commissioners court later likely completed that dedication by voting to accept and adopt the road as County Road 425. The issue now is whether the commissioners court may use a similar process to bring the additional subdivision roadway into the county road system, consistent with Texas road-dedication statutes and Burnet County's subdivision regulations.

A. A petition may initiate the process for opening a new road or changing an existing road, but the petition itself does not transfer right-of-way or require the county to accept the additional road.

There are two types of dedication, express and implied. *Viscardi v. Pajestka*, 576 S.W.2d 16, 19 (Tex. 1978). To establish a successful dedication, whether express or implied: (1) the person who makes the dedication must have the ability to do so, such as having fee simple title; (2) there must be a public purpose served by the dedication; (3) the person must make either an express or implied offer; and (4) there must be an acceptance of that offer. *Moody v. White*, 593 S.W.2d 372, 378 (Tex. Civ. App.—Corpus Christi 1979, no writ). In furtherance of this, a recorded plat dedicating streets to the public is a mere offer of dedication, and the commissioners court must accept the dedication before those streets become public or fall within the county road system. *Jester*, 199 S.W.2d at 1007. Burnet County's subdivision regulations confirm and strengthen that point. The regulations provide that a "[r]equest for acceptance as county roads, must be by written petition signed by the majority of the property owners and/or the authorized representative of the subdivision association and/or the governmental trustee or entity." Burnet County, Tex. Subdivision and Development Regulations § 1(8)(E) (Aug. 8, 2019). Additionally, the regulations explain that approval of a plat "shall not be deemed an acceptance of the proposed dedications" and does not impose any duty on the county to maintain or improve such dedications. *Id.* § 1(2)(E). Further, Burnet County "will not accept or maintain" subdivision streets until the streets have been constructed as specified in the regulations and accepted "by order in writing by the Burnet County Commissioners Court in open session." *Id.* § 1(2)(F).

In the present case, the four elements of dedication would likely be satisfied. The original trustee of the land and the person who made the dedication in the plat had fee simple title and was able to convey it. Additionally, the plat's dedication language dedicated the roads to the public forever. As the courts have discussed, the plat's dedication language does constitute an express

offer. See *Jester*, 199 S.W.2d at 1007; *Taylor*, 2020 WL 6878729 at *4. Accordingly, the property owners' petition concerning the additional roadway is legally important because Burnet County requires such a petition as part of the acceptance process. The petition itself, however, does not transfer right-of-way, complete dedication, or require the commissioners court to accept the road into the county road system. Instead, it serves as the formal request that triggers county review of whether the road satisfies the county's legal and engineering prerequisites for acceptance. Should the commissioners court vote to accept the additional road as a county road, it would likely satisfy the fourth and final element of successful dedication.

B. Because the additional road was also shown on the 1983 plat and dedicated to public use, the commissioners court may be able to accept that road now by specific written order if it determines that the plat dedication and Burnet County's acceptance prerequisites have been satisfied.

The same 1983 plat language that dedicated County Road 425 to the use of the public forever also appears to have dedicated the other streets shown on the plat to public use. Thus, as with County Road 425, and as seen in *Stein*, the additional roadway has likely already been offered for dedication, but that offer alone did not place the road into the county road system. Texas courts emphasize that a street is offered for public dedication when the plat is approved and recorded, but it does not become part of the county road system unless and until the county accepts it. See *Jester*, 199 S.W.2d at 1007; *Stein*, 53 S.W.3d at 38-39. Burnet County's regulations add county-specific acceptance conditions; the commissioners court will determine which dedications will be accepted for county maintenance based on "interconnectivity with existing county or state maintained roads." Burnet County Subdivision & Dev. Regs. § 1(2)(E). They further require that only main arterial roads with a minimum 50-foot right-of-way, or another right-of-way deemed adequate by the commissioners court, will be considered for maintenance acceptance in subdivisions established before April 24, 2000. *Id.* § 8(A)-(F). The regulations also require that such

subdivisions reach fifty percent occupancy or a daily traffic count consistent with public safety, as determined by the precinct commissioner, and require property owners or subdividers to donate material costs needed to improve roads to county specifications, with the county providing labor and equipment. *Id.*

Applying those rules here, the commissioners court may likely accept the additional roadway if it determines that the road was included in the original plat dedication, that the road qualifies as a road the county is willing to accept under the Burnet County regulations, that the petition meets the County's majority-signature requirement, and that the road and related prerequisites are satisfied. If those prerequisites are met, the commissioners court may likely enter a specific written order in open session identifying the additional road and accepting it in the county road system for maintenance. In that sense, the legal process for the additional roadway may mirror the process that likely occurred for County Road 425; a prior written plat dedication would therefore likely be completed by a later express act of acceptance by the commissioners court.

C. Acceptance of the additional road would likely establish public-road status and county maintenance authority, but absent a separate fee-simple conveyance, it would not necessarily vest fee title in the county.

A county road is generally understood to be a public road accepted for maintenance by the commissioners court. Chapter 258 of the Texas Transportation Code authorizes a county to adopt a county road map to "clarify the existence of a public interest in a road." Tex. Transp. Code Ann. § 258.001. If there is no question about the county's claim of a public interest in a road, the status of that road as a public road will not be affected if it is left off the Chapter 258 county road map. *Coryell County v. Harrell*, 379 S.W.3d 345 (Tex. App.—Waco 2011, no pet.). A person contesting a private right, title, or interest in the road may contest the inclusion of the road in the county road map by filing a suit in district court within two years of the map's adoption. *Id.* at 348; Tex. Transp.

Code Ann. § 258.004(a). Such a map serves as conclusive legal evidence of the county's claim to the road and its right to spend public money on the road. Tex. Transp. Code Ann. § 258.001-.002. However, it is also emphasized that the county road map process "does not affect true issues of title" and "does not create a taking," meaning that public-road status and fee ownership are separate legal questions. *Harrell*, 379 S.W.3d at 348.

Burnet County's regulations are consistent with that distinction and focus on when the county will accept a subdivision street for maintenance, what engineering and right-of-way conditions must exist, and what written order is necessary for county maintenance. The regulations, however, do not state that county acceptance automatically transfers fee title in the road to the County. Burnet County Subdivision & Dev. Regs. §§ 1(2)(E), 1(8)(A)-(F). Accordingly, acceptance and mapping generally confirm a public-road interest and maintenance authority, while fee title in the roadway strip typically remains with the underlying owner subject to the public's easement.

On the facts here, even if the commissioners court accepts the additional roadway for county maintenance, that acceptance would establish the County's public-road and maintenance authority over the roadway, not necessarily fee-simple ownership of the underlying land. That distinction matters here because no separate right-of-way deed, condemnation judgment, or other instrument expressly conveying fee title in either roadway to the County has been located. As a result, it is likely the case that acceptance of the additional road would place that road in the county road system and authorize county maintenance, while underlying fee-title issues would continue to be governed by the plat, any deeds of record, and any other title instruments affecting the subdivision. The additional road appears to have been expressly dedicated to public use through the dedicatory language of the 1983 plat, and if the commissioners court now enters a written order

accepting that road for maintenance, and, if it chooses, includes the road on a Chapter 258 county road map, those actions would likely satisfy the statutory requirements for establishing public interest in the road. Tex. Transp. Code Ann. §§ 281.002-.003, 258.001-.002. If the County wants certainty regarding fee ownership, additional right-of-way width, or the ability to undertake major future improvements beyond the scope of the existing dedication, it would likely need to conduct title research and, if necessary, obtain supplemental dedication instruments, purchase the needed interest, or pursue condemnation.

D. A property owner's objection would trigger a fact-specific dispute over public-road status or title but would not automatically under a completed dedication and acceptance, and accepted county roads are generally maintained at county expense.

Once the additional subdivision road has been accepted into the county road system by written order, an individual property owner's objection to that status would likely not, by itself, undo the county's acceptance. Chapter 258 provides the framework for contesting a county's claimed public interest in a road once the county adopts a county road map. Tex. Transp. Code Ann. §§ 258.001-.005. Texas courts further explain that an abutting landowner has rights in an established public road, and a commissioners court generally may not close, abandon, or vacate a public road over the objection of abutting landowners without following applicable statutory procedures. Tex. Transp. Code Ann. §§ 251.051, 258.003-.005; see also *Harrell*, 379 S.W.3d at 348. A county road map serves as conclusive evidence of the county's public-road claim. If a contest is filed within the two-year period, it triggers a jury-of-view process and places the burden on the county to prove its public interest in the road. Tex. Transp. Code Ann. § 258.004(a). Likewise, Burnet County's subdivision regulations provide detailed procedures for canceling or closing subdivision roads or easements, including published notice and an opportunity to protest. If a property owner contests the public status of the additional road, the dispute would likely focus

on whether the county properly completed dedication and acceptance, or on underlying title, rather than automatically undoing the road's status as a county road. If the County formally accepts the additional roadway into the county road system, a contesting owner would likely need to challenge the validity of the dedication, the adequacy of the acceptance procedure, or the County's claimed public interest through a judicial proceeding rather than merely objecting to the road's use or maintenance. See Tex. Transp. Code Ann §§ 258.001, .004; *Jester*, 199 S.W.2d at 1007.

Responsibility for maintenance depends on whether the additional roadway has been accepted into the county road system. A county may not repair or maintain a private road and may not use county labor, materials, or equipment on private property unless a narrow exception applies. *Godley v. Duval County*, 361 S.W.2d 629, 630-631 (Tex. App.—San Antonio 1962, no writ). Burnet County's subdivision regulations are consistent with that as well. The regulations further explain that for subdivisions built prior to 2000, property owners within the subdivisions shall donate all material costs needed to improve roads to meet county specifications as a method of acceptance of subdivision roads, and the County will provide labor and equipment. Burnet County Subdivision & Dev. Regs. § 1(8)(C).

If the commissioners court accepts the additional road, future routine maintenance would be the County's responsibility, while any pre-acceptance work necessary to meet county standards would remain the responsibility of the subdivision owners under the Burnet County regulations. Tex. Transp. Code Ann. § 251.051. Additionally, if a property owner comes forward contesting the additional roadway after acceptance, the dispute would most likely focus on whether the County properly acquired and accepted a public interest in the road or whether any remaining fee-title issue limits the scope of the County's rights.

CONCLUSION

County Road 425 is likely already part of the county road system because the 1983 subdivision plat expressly dedicated the subdivision streets to public use and the commissioners court later accepted and adopted that road as County Road 425 by vote and notation in its minutes, consistent with Texas dedication law and Burnet County's subdivision regulations. The homeowners' petition may support a clarifying resolution or road-map action, but it likely does not add a new public interest or materially alter the county's existing authority to maintain County Road 425.

The commissioners court may also likely accept the additional subdivision road into the county road system because that road appears to have been included in the same 1983 plat dedication, but the current petition is only the beginning of that process and does not itself accomplish acceptance or supply right-of-way. To accept the additional road, the commissioners court should ensure that the road satisfies Burnet County's subdivision-regulation requirements for acceptance, including that the plat dedication adequately covers the route, the road and drainage improvements meet county construction and right-of-way standards, and a sufficient petition has been submitted. From there, a specific written order in open session accepting the road for county maintenance could likely occur. Any remaining fee-title questions should be addressed through title research and, if needed, supplemental dedication instruments, purchase, or condemnation.