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## **CREATION of HIGHWAYS in INDIANA**

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### **Introduction**

Frequently, a professional land surveyor is faced with having to make decisions relating to the rights that the public might have in the way of passage fronting her client's property and in determining the associated boundaries.

The objective of this paper is to outline and discuss the methods by which a way of passage may become a public highway in Indiana, thereby providing a guideline which professional land surveyors may follow when attempting to determine the property rights of landowners and the public. [The term - highway - is used in its generic sense throughout this paper. In *Conner v. The President and Trustees of New Albany*,<sup>1</sup> the Court stated: "[A] public street in a town is a public highway. This position is too universally admitted to require authority to support it."<sup>2</sup> However, not all public highways are streets.<sup>3</sup>]

This paper will only cover the methods of establishing a highway through common law dedication and user by the public for a statutory period.

### **Establishing a Highway in Indiana**

The 1860 Indiana Supreme Court case of *Gwynn v. Homan*,<sup>4</sup> without citing any facts, sets forth the requirements which would have to be proven to establish a highway, to wit:

- 1) By a public plat of the town or city, on which the street is laid down, together with user by the public of the designated ground as a street. The map platting by the proprietor, without a sale of lots adjoining or use by the public, does not seem to be sufficient.
- 2) The fact of a street, or highway, may be proved, by showing a parol dedication to the public, accompanied by user by the public.
- 3) Such facts may be shown by proof of acts on the part of ... the owner, such as selling lots on opposite sides of a strip of ground suitable for a street or highway, and standing by and permitting such user, for a time, and under circumstances, evidencing a dedication; or standing by and permitting such user, for a time, and under circumstances, evidencing a dedication.
- 4) By showing a taking, by lawful authority, for public use.<sup>5</sup>

While *Gwynn v. Homan*,<sup>6</sup> sets forth four methods of establishing a highway in Indiana, a careful analysis of the Indiana cases indicates that highways may be created by only three methods: 1) common law dedication,<sup>7</sup> 2) user by the public for a statutory time period - currently twenty years,<sup>8</sup> and 3) lawful taking;<sup>9</sup> the acts of the owner and the showing of streets on a plat merely being interpreted as evidence of an intent to dedicate.<sup>10</sup>

## Common Law Dedication: Intent to Dedicate

Generally, common law dedication requires compliance with two elements: 1) the owner must intend to dedicate the land in question for a public purpose,<sup>11</sup> and 2) the public must accept the dedication.<sup>12</sup> No particular forms of words are required to establish a dedication.<sup>13</sup> “[A]n examination of the cases ... will show that dedications have been established in every conceivable way by which the intention of the dedicator [can] be evinced.”<sup>14</sup>

The intention necessary to dedicate a strip of land for public highway purposes was at issue in the case of *The City of Columbus v. Dahn*<sup>15</sup> where the plaintiff sought to recover a penalty for obstructing the alleged street.<sup>16</sup> The street had never been platted or expressly dedicated. However, the facts showed that the defendant’s grantor had conveyed land to the defendant and others, on each side of a strip of land, describing the land so as to leave room for the extension of an existing street. The defendant’s description stated: “[N]orth to the south side of Walnut Street when extended ... .”<sup>17</sup> (emphasis added) At trial, the defendant’s grantor testified that he “never intended to dedicate [the] strip as a street ... .”<sup>18</sup> The Court stated:

We think that the question, whether a person intends to make a dedication of ground to the public for a street or other purpose, must be determined from his acts and statements explanatory thereof, in connection with all the circumstances that surround and throw light upon the subject, and not from what he may subsequently testify as to his real intent in relation to the matter. And this is on the principle that the public have the right to suppose that a man intends what his outward conduct and statements indicate, inasmuch as they cannot discover his intention in any other manner.<sup>19</sup>

In *McClaskey v. McDaniel*,<sup>21</sup> the appellant sued the appellee to quiet title to certain real estate. “McClaskey Lane” had existed for over forty years prior to the trial. Houses on adjoining lands were built and arranged so as to face the lane and the lane was used for ingress and egress by a number of families.<sup>22</sup> In fact, the appellant knew that various persons had continuously used the lane and he had never objected to its use. However, the appellant never intended to dedicate the land to the public use or to give any one the right to use it.<sup>23</sup> The appellee had inspected the land prior to making a purchase. During the inspection visit, he was advised, but not by the appellant, that the lane was used for ingress and egress by those that had an occasion to use it. The Court, in determining that the lane was a public highway by implied dedication “... which arises by operation of law from the conduct of the landowner,”<sup>24</sup> estopped the appellant from asserting otherwise.<sup>25</sup> The intent element was satisfied by the visible conduct of the landowner, i.e. permitting the public to come and go as they pleased.<sup>26</sup> The Court stated:

Individuals as well as the public have the right to act with reliance upon open conduct on the part of the landowner such as would induce an ordinarily prudent man to infer such intent, notwithstanding any hidden or unexpressed purpose in his mind to the contrary. Therefore, it is not always necessary to a dedication that the intent should actually exist in the mind of the landowner, who ... must be presumed to have intended what his conduct indicates.<sup>27</sup>

Express dedication is not required to dedicate a street. In *Faust v. The City of Huntington, et al.*,<sup>28</sup> the appellant and a partner had platted an addition to the City which showed various streets and lots; however, the appellant denied ever granting any land to the appellee for street purposes. The Court, in explaining that land could not be appropriated without compensation, did outline a method of acquiring land by implied dedication. The method requires open and visible acts by the landowner which unequivocally indicate to the public that he intends to open a street, followed by a reliance of the public on those acts.<sup>29</sup> “If the acts indicate an intent to dedicate, are so treated by the public, and there is an acceptance, then it is immaterial whether there was ... any express dedication.”<sup>30</sup>

The presumption of a dedication will exist when the unopposed user of a highway by the public, over the land of an individual who is aware of the user, continues for a period of “four or five years.”<sup>31</sup> In *The State v. Hill*,<sup>32</sup> the defendant was charged with obstructing a “public” highway, and at trial it was proved that the highway had not been laid out and established in any mode prescribed by law. The Court, citing an earlier case, stated that the weight of authority seemed to be that a user for a lesser period of time (less than four or five years), with the assent of the owner, might be sufficient to infer a dedication if public accommodation and property rights might be materially affected.<sup>33</sup> Therefore, a very limited period of user by the public will be necessary to imply a dedication if the public is dependent on the way for ingress and egress, as it is not the policy of the law to cut off the ingress and egress of landowners to and from their property.<sup>34</sup>

The U.S. Supreme Court, while not expressly addressing the issue of time, appears to have further limited the time required to sustain a dedication in *Morgan v. Railroad Co.*,<sup>35</sup> where they stated: “[A]ll that is required is the assent of the owner, and the use of the premises for the purposes intended, ... the owner’s acts and declarations [are] in the nature of an *estoppel in pais* and preclude him from revoking the dedication.”<sup>36</sup>

If a single act is to be relied upon to establish dedication, it must be of such an unequivocal nature, that a lapse of time or the presence of user will not be required to aid the presumption of dedication.<sup>37</sup> Although the case did not involve a public street, a question of whether a public dedication of a “square” had been made was at issue in *The City of Logansport v. Dunn*.<sup>38</sup> “Spencer Square” was a city block on a platted map. Dunn had received “Spencer Square” in a partition as an heir of General Tipton. Lots adjoining the square had been sold to raise money to pay the debts of the General. After receipt of the land, Dunn fenced it in and the City brought an action to establish their claim.<sup>39</sup> Evidence indicated that a number of family members were buried in the square; however, the square was generally known as public ground and the General had at one time stated that the ground was to be public. Testimony indicated, however, that no witnesses could say whether buyers of adjacent lots understood it to be public.<sup>40</sup> (See the discussion of platted streets, and the sale of lots with reference thereto, *infra*.) Testimony also indicated that the grantor claimed ownership and exercised acts of ownership over the square until the time of his death.<sup>41</sup> The Court, in finding that no dedication had ever taken place, stated:

A single declaration made on one occasion to one person of an intention to devote a piece of ground to the public use, unconnected with any act in furtherance of the object, would certainly not amount to a dedication, especially when the declaration was accompanied by an act apparently inconsistent with the purpose declared.<sup>42</sup>

In *Dunn*<sup>43</sup> *supra*, the General, after declaring that the square was to be public, then proceeded to have his wife buried in the square, thereby acting contrary to his previous offer of dedication to the public.<sup>44</sup>

The Courts have not always found the necessary intent to constitute a dedication. In *Mansur v. The State*,<sup>45</sup> the appellant had placed a fence five feet inside of his property line. The portion of the property that was “fenced-out” appeared to be the alley by five feet. The appellant then rebuilt the fence on his true boundary line, thereby reducing the width of the alley to less than ten feet - making it too narrow for a hay wagon to travel it. The Trial Court determined that there had been a dedication.<sup>46</sup> The Indiana Supreme Court reversed the Trial Court<sup>47</sup> reasoning that men fence in their lots without taking much care to place fences on the exact boundaries and they do this without intending to dedicate any part of the ground outside the fence.<sup>47A</sup> Only when the landowner finds it necessary to replace the fence will he have occasion to question its location. Even if he should discover that the fence is not situated on the true property line, the landowner might not decide to replace the fence until such time as it actually needs replacement. In the meantime, the public’s use of the

land outside of the fence does not result in any complaint from the rightful owner because he suffers no real injury.<sup>48</sup>

### **Common Law Dedication: Acceptance**

The acceptance of the dedication may be either express or implied,<sup>49</sup> and is a required element of common law dedication.<sup>50</sup> While express acceptance is normally accomplished by an official action of the legislative body of the jurisdiction (for example, the County Board of Commissioners), the Court has accepted other acts as evidence of express acceptance. In *Rhodes v. Town of Brightwood*,<sup>51</sup> the appellant sought to quiet his title to a square of ground which was labeled “Morris Park” on a filed plat. From the year that the plat was recorded (1872) until 1878, the park did not appear on the tax rolls.<sup>52</sup> The Court stated: “... [T]he failure of the public authorities to place the park lands upon the tax [roll] may be regarded as evidence of express acceptance by the public of the dedication of the park.”<sup>53</sup>

Implied acceptance presents a more complicated issue. In *Boyer v. The State*,<sup>54</sup> Boyer had obstructed a thirty foot wide highway by erecting and maintaining a fence and stable on about three feet of it.<sup>55</sup> The evidence showed that the street in question had been dedicated by platting and recording; however, the only portion of the street that had been used and worked was that portion outside the fence. There was no record of express acceptance of the street; the only evidence of acceptance being the use of the street by the public for some years and working of the street by the proper authorities.<sup>56</sup> The Court, in finding acceptance, stated: “The user ... of the street as a highway, by the public, and the authorities having charge of highways, [is] evidence tending to show the acceptance of [the] grant.”<sup>57</sup> Although the Court found that the street had been worked by the proper authorities, its holding does not appear to require repair of the street in addition to user by the public.<sup>58</sup>

Repair of the roadway is also evidence of acceptance of the dedication by the public authorities.<sup>59</sup> In *The Town of Fowler v. Linquist*,<sup>60</sup> the appellant had erected a fence on a platted street and the appellee had run into one of the fence posts, causing great harm to himself. The Trial Court awarded the appellee damages; the appellant appealed, assigning as error the fact that the place of injury was not shown to be a public street.<sup>61</sup> In affirming, the Supreme Court indicated that the street appeared on a duly recorded plat and that the acceptance of the platted street had been accomplished by user and travel by the public.<sup>62</sup>

The Court also found that the Town authorities had worked the street when such work was necessary.<sup>63</sup>

Even though no work was needed at the immediate site of the incident, evidence showed that the Town authorities had worked on the parts of the street which were north and south of the immediate site and the Court determined that this working of the street was sufficient to constitute an acceptance of the dedication.<sup>64</sup>

In *Mansur*<sup>65</sup> *supra*, the Court determined that even if there had been an implied dedication, it had not been accepted by virtue of the fact that: 1) the city neither exercised nor claimed any control over the five foot strip which was adjacent to the alley; 2) the alley was never platted or worked by the city; 3) and the appellant was assessed costs for improvements based on the full depth of the lot including the five feet alleged to have been a part of the alley.<sup>66</sup> These acts of the City were found to be directly contrary to the theory that the strip of ground constituted a part of the alley.<sup>67</sup>

## Common Law Dedication: Streets Shown on Plats

It is a common practice for engineers and surveyors to prepare plats showing streets, alleys, blocks, and lots. The plat is then recorded in plat books<sup>68</sup> in the County Recorder's office, and the legal description of the lot is written by making reference to the plat book and page.

The general rule with respect to streets shown on a plat is that the recording of the plat, with streets shown, operates as dedication of the street.<sup>69</sup>

A variation of the rule appears to have had its beginning in an act of the Assembly which was approved on December 5th, 1811.<sup>70</sup> The first section of the act provides that the proprietor of any town shall prepare and record a plat showing public grounds, streets, lanes, and alleys. The second section of the act provides that any grant to the public, marked or noted as such, shall be considered as a general warranty to the public for the uses and purposes intended by the donor.<sup>71</sup>

The 1819 case of *Conner v. The President and Trustees of New Albany*<sup>72</sup> involved a suit in equity against Conner for unlawfully breaking and passing over the complainant's close to reach his ferry. The plaintiffs alleged that they were the owners of the land adjoining the Ohio River because of a filed plat. Conner answered that the platted street was 100 feet wide and its southern edge was at the edge of the river.<sup>73</sup> The Court determined that a public highway, running to the river's edge, had been granted by the or, analyzed the depiction of ways on plats. The following quotation serves as an excellent guideline to be used when attempting to determine whether a plat shows a street.

The plat ... exhibits the strip of ground extending from the National Road north to Market Street, and it is represented s a way, and its width is stated to be fifty feet. It is not numbered as a lot, nor does it correspond in form or dimensions with the lots which the plat exhibits. It is true that it is not named as a street, but its shape, situation and dimensions show it to be a way of some kind. We know, as a matter of general knowledge, that the boundaries of lots, of streets, alleys and other ways, are usually indicated upon plats by appropriate lines, and we can, therefore, determine from the face of the plat before us that the lines marking the boundaries of the strip indicating a way of some kind. It is not necessary that in the explanation attached to a plat there should be a minute description of all the ways laid out upon it, for it is sufficient if the lines and figures used indicate the existence of a way. Lines found on a plat and representing the boundaries of a part of the subdivisions it was intended to exhibit are to be taken to mean something, and are not to be regarded as having been used without a purpose. The lines upon this plat so clearly indicate a way that the only doubt that can possibly arise is as to its character, whether it is a public or a private one, for, to affirm that a way of some kind is not designated, is to affirm that the lines marking the boundaries of the strip were used without a purpose, and this would be an affirmation involving a palpable violation of logical rules and legal principles. The reasonable presumption is, that a way appropriately designated by lines drawn from point to point, which appears upon a plat executed for the purpose of being placed upon record as exhibiting an addition to a city, is a public way, unless, indeed, there is something in the plat itself exhibiting a contrary intention.<sup>76</sup>

In *Wolfe et al. v. The Town of Sullivan*,<sup>77</sup> Wolfe had erected a fence which extended into a platted street a distance of ten feet. Wolfe's fence, in effect, enclosed a ten foot by one hundred forty-two foot portion of Broad Street. Broad Street had been laid out and platted, the plat being duly recorded over forty-five years prior to the action. The street had been used by the public since its creation; also, Wolfe and others had made permanent improvements to their lots using Wolfe's fence as a reference for the street's boundary.<sup>78</sup> The Court noted that the original proprietor of the town had sold all the lots fronting on Broad Street and also noted that the street had been used by the public as a thoroughfare for nearly forty years.<sup>79</sup> The Court, in

finding for the Town, determined that the plat served as the dedication of the street to the Town<sup>80</sup> and the public's subsequent use served as the acceptance of the dedication.<sup>81</sup> The Court also recognized the fact that the defendants (plaintiffs in error) would lose valuable improvements, but stated that such loss was due to their own neglect and that the Town would not be estopped from proceeding with the action.<sup>82</sup>

Hall *et al.* v. Breyfogle,<sup>83</sup> was an action to restrain the appellant town from opening and improving certain alleged streets which ran through lands of the appellee.<sup>84</sup> The appellee had purchased various lots - each grant being described by making reference to a recorded plat - bordering on the alleged streets from various grantors and had enclosed and used the alleged streets for thirty years.<sup>85</sup> The Court determined that the appellee's lots were shown on a plat of due form, that the plat had been properly recorded, and that the plat was marked into regular lots and blocks. Also, each block was bounded by a regular, narrow strip of ground marked with the name of a street.<sup>86</sup> The Court held that the making of a plat upon which streets, alleys, lots, and blocks are noted as such, and the sale of lots as designated thereon, operated as an irrevocable dedication of all the streets so marked.<sup>87</sup> The acceptance of the dedication had been accomplished by the Town's extension of its corporation limit so as to include the addition and by causing various improvements to be made to some of the streets shown on the plat.<sup>88</sup> The Court also determined that the dedication and the acceptance covered not only the established streets, but included those granted and not opened as well.<sup>89</sup>

In a recent case, Cook v. Rosebank Development Corp.,<sup>90</sup> evidence showed that property which a road occupied had never been conveyed since its initial acquisition and that various maps prepared as early as 1840 showed the road in question in a way similar to how other streets were represented. The road was also labeled on one of the maps, in the grantor's handwriting, as "South Road." Further, the road appeared in planning documents used by the City, and in other planning documents used by the State.<sup>91</sup> The Court of Appeals, in determining that South Road was a public highway, stated: "... [T]he **failure of the original common grantor to convey the strip of land to others while selling lots on either side**, [together] with his intent to dedicate the same as a public road which was expressed in maps published thereafter, ... establish[ed] a dedication of the road."<sup>92</sup> (emphasis added) It should be noted that the maps had not been officially published, nor were they ever filed in the County Recorder's Office.<sup>93</sup>

### **User for Twenty Years**

Indiana has, for a long period of time, had a statute which establishes a highway upon proof of twenty years of highway user.<sup>94</sup> Section 55 of the acts of 1849 provided that "all public roads, not recorded, which have been or shall be used for twenty years or more, shall be deemed public highways."<sup>95</sup> Numerous case have interpreted the statute.

In an action against the appellant to recover damages for the killing of the appellee's mule, a cause of action arose against the appellant railroad by virtue of the fact that railroads were required to place cattle-guards at public highway crossings.<sup>96</sup> At issue was whether the "highway" was a public highway. The statute then in effect required the same twenty years of user that section 55 of the acts of 1849 required. The Court stated that user by the public for twenty years was sufficient and that no further evidence was needed.<sup>97</sup> The Court went on to explain that user by the public did not require user by a vast number of people. Rather, "[i]f it [was] traveled by the people of the neighborhood and all others desiring to travel through [the] way, [it was] user by the public."<sup>98</sup> Further, the Court quoted Elliot Roads and Streets, 7 with approval as follows:

The character of the road does not depend upon its length, not upon the places to which it leads, nor is its character determined by the number of persons who actually travel upon it. **If it is free and common to all the citizens, then no matter whether it is, or is not, of great length, or whether it leads to or from city, village or hamlet, or whether it is much or little used, it is a public road.**<sup>99</sup> (emphasis added)

In *Stewart v. Swartz*,<sup>100</sup> the plaintiff had been injured when he ran into a rope which had been stretched across and over an alleged public highway by the defendant's children. One of the issues was whether the place across which the rope was stretched was a public highway. The evidence showed that the place where the rope was stretched was a continuation of a street in the unincorporated town. The place had been used by the public as a way to the railroad right-of-way for sixty years. Evidence also showed that the way was originally private, ending at a sawmill, and that subsequent use was permissive.<sup>101</sup> It had formerly been traveled to a much greater extent; however, it was presently used by any one wanting to travel it with a vehicle. The instructions to the jury required the finding of a private highway if they determined that the way was private and had not been used by the general public.<sup>102</sup> The Appellate Court, in reversing the Trial Court, held that twenty years of indiscriminate use by the general public would establish a highway under the statute regardless of whether the use was under the license of the owner.<sup>103</sup>

However, the Court mentioned that no public highway would have been established if the only users were merely those having business with the landowner, nor would a public highway have been established if the user was by express permission of the landowner.<sup>104</sup>

The Court, in *Stewart*<sup>105</sup> *supra*, also clarified the meaning of the statute when they stated: “[I]t is twenty years’ continuous use by the general public which makes a road a highway, and **it is immaterial whether the use is with the consent** or over the objection of the adjoining landowner, or whether such owner intended to dedicate it to the public as a highway.”<sup>106</sup> (emphasis added) Therefore, the lapse of time alone is sufficient without requiring any further evidence of a dedication<sup>107</sup> other than that the user must have been the public.<sup>108</sup> The Court went on to emphasize that the number of people who must travel the road was not fixed; rather, a single family traveling the road might be sufficient.<sup>109</sup>

*Pitser v. McCreery*<sup>110</sup> involved a situation where the original landowner had gone to great efforts to restrict the roadway. The Court found that travelers regularly laid down the gates and passed through.<sup>112</sup> The Court stated: “It ... become[s] a highway ... if the use [has] been without the consent or over objection of the adjoining landowners, as if it had been dedicated by them, if it has been continually used as such for 20 years.”<sup>113</sup>

## Summary

In Indiana, highways may be created by:

- 1) common law dedication followed by the acceptance of the dedication, or
- 2) twenty years of user by the public (use being the sole criteria), or
- 3) representation of the way on a plat with the sale of lots referencing the plat.

## REFERENCES

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4. Gwynn v. Homan, 51 Ind. 201 (1860).
5. *Id.* at 202.
6. *Id.*
7. See, for example, The Town of Fowler v. Linquist, 138 Ind. 567, 37 N.E. 133 (1894).
8. See, for example, Southern Indiana Railway Co. v. Norman, 165 Ind. 126, 74 N.E. 896 (1905).
9. Gwynn v. Homan, 51 Ind. 201, 202 (1860).
10. See, for example, Boyer v. The State, 16 Ind. 451 (1861) and Gillespie v. Duling, 41 Ind. App. 217, 83 N.E. 728 (1907).
11. Faust v. The City of Huntington *et al.*, 91 Ind. 493 (1883).
12. Ross v. Thompson, 78 Ind. 90 (1881). See also, The City of Columbus v. Dahn, 36 Ind. 330 (1871) and The President and Directors of The Indianapolis and Bellefontaine R.R. Co. v. The City of Indianapolis, 12 Ind. 620 (1859).
13. Morgan v. Railroad Co., 96 U.S. 716, 723 (1877).
14. *Id.*
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16. *Id.*
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35. Morgan v. Railroad Co., 96 U.S. 716 (1877).
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37. City of Logansport v. Dunn, 8 Ind. 378 (1856).
38. *Id.*
39. *Id.* at 379.
40. *Id.* at 381.
41. *Id.*
42. *Id.* at 383.
43. City of Logansport v. Dunn, 8 Ind. 378 (1856).
44. *Id.*
45. Mansur v. The State, 60 Ind. 357 (1878).

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46. *Id.* at 357.  
47. *Id.* at 364.  
47A. *Id.* at 361.  
48. *Id.*  
49. *Williams v. Wiley*, 16 Ind. 362 (1861). See, also, *Morgan v. Railroad Co.*, 96 U.S. 716 (1877). See, also, *Mansur v. The State*, 60 Ind. 357 (1878), "... [T]here must be not only an intent to dedicate on the part of the owner, but also an acceptance by or on behalf of the public."  
50. *Rhodes v. Town of Brightwood*, 145 Ind. 21, 43 N.E. 942 (1895).  
51. *Id.*  
52. *Id.* at 23.  
53. *Id.* at 25.  
54. *Boyer v. The State*, 16 Ind. 451 (1861).  
55. *Id.*  
56. *Id.* at 452.  
57. *Id.*  
58. *Id.*  
59. *The Town of Fowler v. Linquist*, 138 Ind. 567, 37 N.E. 133 (1894).  
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61. *Id.* at 568.  
62. *Id.* at 571.  
63. *Id.* at 572.  
64. *Id.*  
65. *Mansur v. The State*, 60 Ind. 357 (1878).  
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67. *Id.* at 363.  
68. See, for example, subdivision of real property regulations for the City of Indianapolis.  
69. 15 Ind. Law Encyc. *Highways* §34.  
70. *Conner v. The President and Trustees of New Albany*, 1 Blackford 43 (Ind. 1819).  
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72. *Id.*  
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87. *Id.* at 503.  
88. *Id.*  
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90. *Cook v. Rosebank Development Corp.*, 176 Ind. App. 664, 376 N.E. 2d 1196 (1978).  
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98. *Id.* at 566.
99. *Id.*
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103. *Id.* at 255.
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105. *Id.*
106. *Id.* at 252.
107. See, also, *Ross v. Thompson*, 78 Ind. 90, 98 (1881).
108. *The Louisville, New Albany and Chicago Railway Co. v. Etzler, Exec.*, 3 Ind. App. 562, 30 N.E. 32 (1891). The word “public” means “all those who have occasion to use” the road. *Village of Grandville v. Jenison et al.*, 84 Mich. 54, 47 N.W. 600 (1890).
109. *Stewart v. Swartz*, 57 Ind. App. 249, 106 N.E. 719 (1914).
110. *Pitser v. McCreery*, 172 Ind. 663, 88 N.E. 303 (1909), rehearing denied, 172 Ind. 663, 89 N.E. 317 (1909).
112. *Id.* at 306.
113. *Id.*