

OPINION NO. 87-046**Syllabus:**

Under R.C. 5553.042 and R.C. 5553.10, a board of township trustees does not surrender or otherwise lose its right, pursuant to authority conferred upon it by R.C. Chapters 5535, 5571, and 5573, to improve and maintain for road purposes tracts of land situated within the township that have not been established as public roads, streets, or highways by the appropriate public authorities, notwithstanding that such tracts of land may have been dedicated to public use on the recorded subdivision plat pertaining thereto.

To: Michael Ward, Athens County Prosecuting Attorney, Athens, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 10, 1987

You have requested my opinion regarding the authority of a township to improve certain platted streets within the township that have not been open to public use. Your letter describes the situation that has arisen as follows:

Athens County has a planned subdivision not inside any of the municipal corporations in the County. The Johnson Coal Mining Company's Addition to the village of Verity (now the unincorporated village of The Plains, Athens Township) had its lots and streets dedicated by the Johnson Coal Mining Company in July, 1908. The plat was recorded in the same year.

I have enclosed a copy of the plat for your review. That portion of McDonald and Oak Streets marked on the plat has never been improved and is that portion of the two streets which the Trustees want to improve. These streets have never been opened or used by the public. The streets are grass. The boundaries have not been physically defined. The adjacent landowners have been parking their vehicles on the "street" and consider the "street" as their own property.

Now, the Athens Township Trustees want to open up or improve McDonald and Oak Streets so that the lots west of McDonald Street may be sold. The Trustees want the public in general to be able to use the streets. However, one of the owners of the adjacent lots opposes this improvement by saying that the roads cannot be improved because the roads have not been open for more than seven years contrary to Section 5553.10, O.R.C. The landowner has not filed a petition to vacate the streets with the Board of County Commissioners.

Besides this statute, Section 5553.042, O.R.C. provides that a Township loses the right to improve streets or roads that have been abandoned and not used for a period of twenty-one years. The Trustees say that the streets have not been abandoned.

Specifically, you wish to know whether the township, pursuant to the terms of either R.C. 5553.042 or R.C. 5553.10, may have surrendered its authority to improve the streets in question, and, if so, whether ownership of the streets reverts to the abutting landowner automatically, or only after they have been formally vacated.

Resolution of your questions requires that I consider initially the duties, powers, and responsibilities conferred by statute upon a board of county commissioners and a board of township trustees with respect to the establishment, improvement, maintenance, and vacation of roads, streets, and highways within their respective jurisdictions. R.C. 5535.01 divides the road and highway system of the State of Ohio into three classes. There are state roads, which "include the roads and highways on the state highway system"; county roads, which are "established as a part of the county system of roads as provided in [R.C. 5541.01-.03]"; and township roads, which "include all public highways other than state or county roads." R.C. 5535.01(A)-(C).¹ R.C. 5553.01-.16 confer upon a board of county commissioners a variety of powers and responsibilities with respect to the establishment, location, alteration, and vacation of all roads and highways within the county. In particular, R.C. 5553.02 states that the board of county commissioners may "locate, establish, alter, widen, straighten, vacate, or change the direction of roads as provided in [R.C. 5553.03-.16]," and that such power "extends to all roads within the county, except that as to roads on the state highway system the approval of the director of transportation shall be had."² R.C. 5553.04 in turn describes the procedures by which action may be initiated under R.C. 5553.02 for the purpose of effecting a road improvement, providing, in part, as follows:

When the board of county commissioners is of the opinion that it will be for the public convenience or welfare to locate, establish, alter, widen, straighten, vacate, or change the direction of a public road, it shall so declare by resolution, which resolution shall set forth the general route and termini of the road, or part thereof, to be located,

¹ R.C. 5541.01-.03, to which reference is made in R.C. 5535.01(B), set forth the procedure by which there is created within each county a system of county roads and highways. In this regard, R.C. 5541.01 directs a board of township trustees, upon request of the board of county commissioners, to report thereto the value, as a used highway, of each road in the township, its length and condition, and the type of traffic upon the road. R.C. 5541.02 further states that the board of county commissioners shall, from the information thus provided, make a determination of the relative importance and value for traffic of the various roads of the entire county, and shall select and designate therefrom a connected system of county roads and highways, and that a map thereof shall be forwarded to the Director of Transportation and, upon approval by him, shall become a part of the records of the board of county commissioners. See also R.C. 5541.03 (application by board of township trustees to board of county commissioners to make an improvement to any county highway); R.C. 5541.04 (procedure for changing the name of a county or township road).

² R.C. 5553.01 defines the term "improvement," as used in R.C. 5553.02-.16, to mean any "location, establishment, alteration, widening, straightening, vacation, or change in the direction of a public road, or part thereof, as determined upon by a board of county commissioners or joint board of county commissioners by resolution."

established, or vacated, or the general manner in which such road is to be altered, widened, straightened, or the direction thereof changed.

When a petition, signed by at least twelve freeholders of the county residing in the vicinity of the proposed improvement, or signed by the owner of the right to mine coal lying under or adjacent to the proposed improvement, is presented to the board requesting the board to locate, establish, alter, widen, straighten, vacate, or change the direction of a public road, such board shall view the location of the proposed improvement, and, if it is of the opinion that it will be for the public convenience or welfare to make such improvement, it may proceed to make such improvement as provided in sections 5553.04 to 5553.16, inclusive, of the Revised Code. Such petition shall set forth the general route and termini of the road, or part thereof, to be located, established or vacated, or the general manner in which such road is to be altered, widened, straightened, or the direction thereof changed.

R.C. 5553.04 further states that when the board of county commissioners declares its intention to proceed with a road improvement, it may also provide in its resolution for the establishment of an appropriate detour route or for the temporary closing of the road to be improved.

R.C. 5553.05 and R.C. 5553.06 provide respectively for a view of the proposed road improvement and a final hearing thereon by the board of county commissioners and notice by publication of the time and place thereof, and submission to the board of a report by the county engineer. The report of the county engineer shall be read at the final hearing on the proposed road improvement, and the board of county commissioners shall, at that time, also hear testimony with respect thereto. R.C. 5553.07. Thereafter, the board of county commissioners shall by resolution enter a finding either approving or rejecting the proposed improvement. Id. See also R.C. 5553.08 (the board of county commissioners may make modifications and changes in the route and termini of a proposed road improvement); R.C. 5553.09 (the board of county commissioners may permit the payment of compensation and damages out of the county treasury to persons affected by the proposed road improvement).

R.C. 5553.10 describes the specific orders a board of county commissioners may enter and the actions it shall take with respect to various types of proposed road improvements subsequent to the final hearing thereon, providing, in part, as follows:

If the proceeding is for the location or establishment of a road, the board shall open up the road as established and such road shall be a public road, and shall be kept open, maintained, and improved as provided by law. If the proceeding is for the vacation of a road, the board shall order the road vacated and it shall cease to be a public road... If the proceeding is for the alteration, widening, straightening, or change in the direction of a road, the board shall make the necessary order to accomplish such purpose. Any part of the road made unnecessary by any change or alteration shall be ordered vacated.

R.C. 5553.10 also provides that a "road, or part thereof, which remains unopened for seven years after the order establishing it was made or authority granted for opening it shall be vacated, and the right to build it pursuant to the establishment in the original proceedings therefor shall be barred."

With respect to roads and highways within the jurisdiction of townships, R.C. 5535.01(C) states that township roads include all public highways other than state or county roads. R.C. 5535.01(C) further provides that the board of township trustees "shall maintain all such roads within its township." See also R.C. 5535.08 (a township shall maintain its roads as designated in R.C. 5535.01). Further authority to construct, repair, maintain, and improve roads and highways within a township is conferred upon a board of township trustees by R.C. Chapters 5571 and 5573. R.C. 5571.02 provides generally that a board of township trustees "shall have control of the township roads of its township and shall keep them in good repair," and that the board of township trustees also "may, with the approval of the board of county commissioners or the director of transportation, maintain or repair a county road, or intercounty highway, or state highway within the limits of its township." R.C. 5571.01 also authorizes a board of township trustees to construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction, or, with the approval of the board of county commissioners or director of transportation, any county road, intercounty highway, or state highway within the township. See also 5571.08 (the board of township trustees shall keep all township roads free from obstruction by snow); R.C. 5571.12 (the board of township trustees shall drag graveled and unimproved public roads of the township semiannually); R.C. 5571.17 (the board of township trustees may erect and maintain at intersecting roads, at least one of which is a township road, suitable signposts).

R.C. Chapter 5573 describes in detail the various procedures to be followed by a board of township trustees in undertaking a particular improvement of a road or highway situated within the township. See, e.g., R.C. 5573.01 (resolution for road improvement); R.C. 5573.02 (transmission of surveys, plans, and specifications by county engineer to board of township trustees); R.C. 5573.06 (order to be made that a road improvement shall be undertaken); R.C. 5553.07-.13 (concerning the assessment and apportionment of compensation, damages, and costs associated with a proposed road improvement); R.C. 5553.14 (sale of township bonds for road improvements). See generally State ex rel. Kreis v. English, 168 Ohio St. 566, 156 N.E.2d 734 (1959) (there is a mandatory duty imposed upon a board of township trustees by R.C. 5571.02 and R.C. 5571.12 to maintain, repair, and drag roads dedicated to public use, such dedication having been accepted by the board of county commissioners); State ex rel. Ramey v. Township Trustees, 28 Ohio Misc. 215, 277 N.E.2d 245 (C.P. Scioto County 1971) (same). See also 1982 Op. Att'y Gen. No. 82-028 at 2-83 ("[w]hile a board of township trustees is expressly empowered to maintain and repair roads, its authority to do so is limited to the maintenance and repair of township roads, and in certain circumstances, county roads, intercounty highways, and state highways"); 1982 Op. Att'y Gen. No. 82-012 at 2-42 ("[t]he only express grants of power currently delegated to township trustees with respect to roads are those concerning road maintenance and repair," as provided in R.C. 5535.01(C), R.C. 5571.01, and R.C. 5571.02).

Finally, R.C. 5553.042 describes the circumstances in which a township may be deemed to have abandoned public roads and highways within the township, the subsequent loss by the township of its rights to the use and enjoyment of those abandoned roads and highways, and the procedure by which such roads and highways may be formally vacated. R.C. 5553.042 thus provides, in pertinent part, as follows:

A township shall lose all rights in and to any public road, highway, street, or alley which has been abandoned and not used for a period of twenty-one years, after formal proceedings for vacation as provided in sections 5553.04 to 5553.11 of the Revised Code have been taken; and upon petition for vacation of such road, highway, street, or alley filed with the board of county commissioners by any abutting landowner, if the board finds that said public road, highway, street, or alley has been abandoned and not used for a period of twenty-one years as alleged in such petition, the board of county commissioners may, by resolution, order the road, highway, street, or alley vacated and such road, highway, street, or alley shall pass, in fee, to the abutting landowners thereof, as provided by law, subject to the preservation of any existing right of way in, over, or under such roadway by any public utility or rural electric co-operative service facilities.

See also R.C. 5553.041 (Director of Transportation may petition the board of county commissioners to vacate or close any public highway, or portion thereof, under the board's jurisdiction); R.C. 5553.043 (permanent easement granted to public utility in any vacated road or highway). See generally In Re Vacation of a Public Road, 18 Ohio St. 3d 397, 482 N.E.2d 570 (1985).

I now direct my attention to your specific questions. You wish to know whether the township in question, pursuant to R.C. 5553.042 or R.C. 5553.10, may have lost its right to improve and make use of certain township roads, and, if so, whether ownership of those roads reverts automatically to an abutting landowner, or reverts only after the roads have been formally vacated. R.C. 5553.042 provides, in part, that a township "shall lose all rights in and to any public road, highway, street, or alley which has been abandoned and not used for a period of twenty-one years, after formal proceedings for vacation as provided in [R.C. 5553.04-.11] have been taken." R.C. 5553.10 further provides, in part, that a "road or part thereof, which remains unopened for seven years after the order establishing it was made or authority granted for opening it shall be vacated" by the board of county commissioners. See generally 1918 Op. Att'y Gen. No. 1084, vol. I, p. 431 (syllabus, paragraph one)(the word "open," as used in G.C. 6869, the statutory predecessor of R.C. 5553.10, contemplates the removal of obstructions above the surface of the earth from the boundaries of a road as established, but does not include any alteration of the surface of the earth itself or the building thereupon of bridges, culverts, or ditches).

It is apparent, from both the language and overall context of R.C. 5553.042 and R.C. 5553.10, that the foregoing provisions apply only to public roads, streets, or highways that have been positively established as such for the use and benefit of the general public. It is only logical that a road or highway may not properly be deemed abandoned and unused for purposes of R.C. 5553.042 or R.C. 5553.10, such that a county

or township surrenders its rights thereto, if the purported road or highway has not, in fact, been established and intended for use as a public way. In the related context of highway maintenance, for example, it has been stated that a duty to maintain and repair a particular road or highway will not be imposed upon a political subdivision in the absence of a showing that the proper public authorities have acceded to the establishment of the road or highway in question as a public way, thereby accepting formal responsibility for its maintenance and repair. See, e.g., State ex rel. Fitzthum v. Turinsky, 172 Ohio St. 148, 153, 174 N.E.2d 240, 243 (1961)(noting that in the absence of a formal acceptance of a road or highway as a public way by the board of county commissioners, or actions from which such acceptance may be implied, use of the purported road or highway by the public in general is not such an acceptance as will impose responsibility on a board of township trustees for the maintenance of roads within the township); State ex rel. Litterst v. Smith, 87 Ohio App. 513, 519, 94 N.E.2d 802, 805 (Pike County 1950)(once a board of county commissioners opens roads for public travel, the duty devolves upon the board to keep them safe for travel); 1984 Op. Att'y Gen. No. 84-016 at 2-53 ("because the acceptance of lands dedicated for road purposes under R.C. 5553.31 renders those lands a public road, a responsibility for maintaining such roads is placed upon public authorities"); Op. No. 82-028 (syllabus)(a board of township trustees lacks the authority to maintain a lane which has not been established as a township road by the board of county commissioners under R.C. 5553.02 or which has not been clearly established as a township road by prescription); 1956 Op. Att'y Gen. No. 7136, p. 690, at 695 (in the case of roads and highways, the concepts of establishment and dedication may be distinguished insofar as establishment, unlike dedication, always "implies acceptance by the public authorities of responsibility for the proper maintenance of a road, rendering it safe for public use"). Cf. R.C. 5559.01-.16 (conferring upon a board of county commissioners discretionary authority to undertake maintenance and improvements with respect to roads and streets in platted territory outside the limits of a municipal corporation, and specifying the various procedures therefor).

Similarly, the question whether a county or township shall be deemed to have lost or surrendered its right, pursuant to R.C. 5553.042 or R.C. 5553.10, to take certain actions with respect to roads, streets, or highways located within its boundaries properly arises only in the case of those roads, streets, or highways that have actually been established as public avenues, for the use and enjoyment of the community-at-large. Accordingly, it must first be determined whether the two tracts of land in question have ever been established as public roads or highways.

There are several methods by which a tract of land may be established as a public road or highway. See 1986 Op. Att'y Gen. No. 86-094; Op. No. 84-016. These include: (1) statutory appropriation; (2) statutory dedication; (3) common law dedication; or, (4) prescription. A board of county commissioners may, pursuant to R.C. 5553.03-.16, appropriate land for road purposes, and, by following the procedures enumerated therein, formally establish such land as a public road or highway. See, e.g., State ex rel. Kerr v. Neitz, 58 Ohio App. 135, 16 N.E.2d 236 (Lucas County 1937); Op. No. 84-016 at 2-51. A tract of land may also be established as a public road or highway by way of dedication. Dedication occurs when a landowner, having determined that certain lands should

be used for road purposes, makes a gift of the land to the state or one of its political subdivisions for such purposes. See, e.g., Railroad Co. v. Village of Roseville, 76 Ohio St. 108, 81 N.E. 178 (1907); Oberhelman v. Allen, 7 Ohio App. 251 (Hamilton County 1915). R.C. 5553.31, which sets forth the procedure by which land may be statutorily dedicated for use as a public road, provides that, "[a]ny person may, with the approval of the board of county commissioners, dedicate land for road purposes." R.C. 5553.31 further provides that, in order to accomplish such dedication, a definite description of the lands to be dedicated with a plat of the lands attached and signed by the landowner, and with the approval and acceptance of the board endorsed thereon, shall be placed upon the proper road records of the county in which the prospective road is situated. Thereafter, "the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the lands so dedicated a public road." Id. See Op. No. 86-094 at 2-533 ("[u]nder R.C. 5553.31, the board of county commissioners must indorse its approval and acceptance of the dedication on the plat showing the lands to be dedicated" before the dedication will be effective to establish the land in question as a public road or highway). See also R.C. 711.041 (no plat certifying land outside a municipal corporation may be recorded without the approval of the county commissioners, but such approval by the board shall not be deemed to be an acceptance of the dedication of any public street, road, or highway dedicated on such plat); Krzewinski v. Eaton Homes, Inc., 108 Ohio App. 175, 161 N.E.2d 88 (Lorain County 1958), appeal dismissed, 169 Ohio St. 86, 157 N.E.2d 339 (1959)(that a plat of a subdivision was approved by the boards of county commissioners and township trustees does not make the roads described therein county or township roads); 1976 Op. Att'y Gen. No. 76-014 (same).

A common law dedication of land to public use results in the establishment of a public road or highway when there is a demonstrated "intention to dedicate, and an actual dedication on the part of the owner, and an acceptance [of such dedication] on the part of the public, which may be proved by the circumstances of the case." Lessee of Village of Fulton v. Mehrenfeld, 8 Ohio St. 440, 446 (1858). See also In Re Application of Loose, 107 Ohio App. 47, 153 N.E.2d 146 (Franklin County 1958)(syllabus, paragraph two)(an intention by the owner of land to dedicate such land for county road purposes and the acceptance thereof by the board of county commissioners on behalf of the public, where such approval and acceptance is signed by the county commissioners, are sufficient to establish a common law dedication); Oberhelman v. Allen, 7 Ohio App. at 255. The acceptance of the dedication by a public authority may be express or implied, but in order to imply acceptance by the public, a public authority must take some positive action to indicate that it has taken control of the property, such as improving the street or road that has been dedicated. See, e.g., State ex rel. Fitzthum v. Turinsky, 172 Ohio St. at 153, 174 N.E.2d at 243; Lessee of Village of Fulton v. Mehrenfeld, 8 Ohio St. at 447-48. Further, the dedication of land by the owner may also be express or implied. State ex rel. Litterst v. Smith. As the court stated in Litterst, the dedication "is express when the animus dedicandi is expressly declared; it is implied when it arises by operation of law from the acts of the owner....Anything which fully demonstrates the intention of the donor, or the acceptance by the public, is effectual." 87 Ohio App. at 517, 94 N.E.2d at 804-05.

Finally, a tract of land may be established as a public road or highway by way of prescription. Railroad Co. v. Village of Roseville, 76 Ohio St. at 117, 81 N.E. at 180; Oberhelman v. Allen, 7 Ohio App. at 259. See also Smith v. Krites, 90 Ohio App. 38, 102 N.E.2d 903 (Allen County 1950)(discussing the principles of law that apply to the establishment of public roads by prescription); Op. No. 82-028 at 2-83. As a general matter, a public road may be established by prescription where it is shown that the general public has used a tract of land in a way adverse to the claim thereto of the title holder of record under some claim of right for an uninterrupted period of at least twenty-one years. Smith v. Krites (syllabus, paragraph two).

According to the information provided in your letter, the tracts of land in question were never established as public roads, streets, or highways by the board of county commissioners through statutory appropriation pursuant to R.C. 5553.03-.16 or their statutory predecessors. Although it is essentially a question of fact that only a court may ultimately decide, see Op. No. 86-094 at 2-535; 1983 Op. Att'y Gen. No. 83-057 at 2-232; Op. No. 82-028 at 2-83, it also does not appear that the tracts of land described in your letter were ever established as public roads by common law dedication or by prescription. You state in your letter that these tracts of land have never been open to, or used by, the general public. Rather, only the owners of adjacent property have made intermittent use of these tracts of land since they were originally platted in 1908. Thus, insofar as these lands have never been used by the general public for a continuous and uninterrupted period of time, I discern no basis for concluding that they were ever established as public roads by way of prescription.

With respect to common law dedication, the recorded plat upon which these tracts of land appear contains the statement that the landowner "dedicates the streets, alleys, avenues and other public ways and grounds shown thereon to public use forever," but reserving the right to mine and remove all coal, oil, gas, and other minerals that may be found thereon. Nothing in your letter suggests that any public authority has either expressly or impliedly accepted this dedication of lands for public use. There is, for example, nothing appearing on the recorded plat itself to indicate an actual acceptance of such lands on the part of the county commissioners or the township trustees for the use and benefit of the general public. Cf., e.g., In Re Application of Loose, 107 Ohio App. at 49, 153 N.E.2d at 148 (holding that the following notation upon a recorded plat, signed by the county commissioners, and in the absence of a proper statutory dedication, was sufficient to establish a common law dedication: "Approved this 1st day of March, A.D. 1906, and the roads, streets and alleys therein dedicated to public use, are hereby accepted as such for the county of Franklin, State of Ohio"). In addition, neither the board of county commissioners nor any other public authority has at any time exercised any control or dominion over these particular tracts of land, or otherwise opened them for use by the general public. This demonstrates an absence of any implied acceptance of such land for public use. Thus, it appears such tracts of land have never been established as public roads by way of common law dedication.

Finally, I must consider whether these tracts of land may have been established as public roads by way of a proper statutory dedication. Resolution of this question requires that I examine the law in force in 1908 when these tracts of

land were first platted and dedicated to public use. See 1956 Op. No. 7136; 1956 Op. Att'y Gen. No. 7113, p. 679; 1949 Op. Att'y Gen. No. 1209, p. 835; 1932 Op. Att'y Gen. No. 4686, vol. II, p. 1194. In 1908, R.S. 4908b, the statutory predecessor of R.C. 5553.31, set forth the procedure by which private land could be dedicated for road purposes as follows:

That any person or persons may dedicate any tract or strips of ground to the public use as a highway, either by plat or deed of gift to the county or township, filed with the commissioners or trustees, and by them recorded as road surveys and other plats; and the county commissioners, or in a proper case the township trustees, may, if they deem such road of sufficient public utility, accept the same, by entry to that effect on their record, and recording as aforesaid. Upon such acceptance, said tract or strip shall become and be a legally established highway.

Accordingly, a dedication of private land upon a recorded plat was effective, pursuant to the terms of R.S. 4908b, to establish the land thereby dedicated as a public road or highway if such dedication were actually accepted by the board of county commissioners or, in a proper case, by the board of township trustees. The question whether such an acceptance by the appropriate public authorities occurred in 1908, or at some time thereafter, with respect to the tracts of land described in your letter is a question of fact that I am unable to resolve. Absent a conclusive showing that the dedication of those tracts of land was at one time accepted, either expressly or impliedly, following the platting thereof, such tracts of land may not be deemed to have been established as public roads, streets, or highways. It would appear, therefore, that the township has not, under the terms of R.C. 5553.042 or R.C. 5553.10, surrendered or lost its authority to improve and maintain for road purposes those particular tracts of land.

Finally, I note that the authority otherwise conferred upon the board of township trustees by the pertinent provisions of R.C. Chapters 5535, 5571, and 5573 to improve and maintain these tracts of land for public use is contingent upon their actual establishment as public roads by one of the methods I have described herein. Op. No. 82-028 (syllabus)("[a] board of township trustees lacks the authority to maintain a lane which has not been established as a township road by the board of county commissioners under R.C. 5553.02 or which has not been clearly established as a township road by prescription"); 1956 Op. No. 7136 at 697 (noting that the authority conferred by R.C. Chapters 5571 and 5573 upon a board of township trustees to construct, reconstruct, resurface, or improve any public roads may be exercised only with respect to "all previously established public roads and highways," and that, "none of the sections in those chapters can be interpreted so as to grant to boards of township trustees the power to establish public roads")(emphasis in original). Thus, the tracts of land in question will first have to be established as public roads or streets before the board of township trustees may undertake any of the contemplated improvements.

Based upon my answer to your first question, I find it unnecessary, for the purpose of this opinion, to address your remaining inquiry regarding the reversion of abandoned roads, streets, and highways to the owners of land situated adjacent thereto. Accordingly, it is my opinion, and you are advised that under R.C. 5553.042 and R.C. 5553.10, a board of township

trustees does not surrender or otherwise lose its right, pursuant to authority conferred upon it by R.C. Chapters 5535, 5571, and 5573, to improve and maintain for road purposes tracts of land situated within the township that have not been established as public roads, streets, or highways by the appropriate public authorities, notwithstanding that such tracts of land may have been dedicated to public use on the recorded subdivision plat pertaining thereto.