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1. PLAT APPROVED AND FILED FOR RECORD—LAND OUTSIDE MUNICIPAL CORPORATION—STREET SHOWN THEREON CONSTRUCTED ACCORDING TO SPECIFICATIONS—OWNER REQUESTS COUNTY ENGINEER TO CHECK STREET—IF PROPERLY CONSTRUCTED AND IN GOOD REPAIR—COUNTY ENGINEER HAS DUTY TO ENDORSE FINDINGS ON APPROVED PLAT—SECTION 711.091 RC.
2. COUNTY ENGINEER—NO AUTHORITY TO ENTER ENDORSEMENT ON RECORD OF PLAT.

SYLLABUS:

1. When a plat of land outside of a municipal corporation has been duly approved and filed for record in the office of the county recorder, and a street shown on such plat has been constructed in conformity with the specifications set forth on the same, the owner of such land may request the county engineer to check such construction, and if he finds that such street has been so constructed and is in good repair, it is the duty of such engineer, under Section 711.091, Revised Code, to endorse such finding on the approved plat.
2. The engineer is without authority to enter such endorsement on the record of such plat.

Columbus, Ohio, June 11, 1956

Hon. William E. Didelius, Prosecuting Attorney
Erie County, Sandusky, Ohio

Dear Sir:

I have before me your communication, reading as follows:

“Your attention is directed to the provisions of Chapter 711 of the Ohio Revised Code, particularly Sections 711.041 and 711.091, which read as follows:

‘Sec. 711.041. No plat certifying lands outside a municipal corporation may be recorded without the approval thereon of the board of county commissioners of the county wherein such lands are situated. The approval of a plat by the board of county commissioners shall not be deemed to be an acceptance of the dedication of any public street, road or highway dedicated on such plat. This section does not apply to such plats as are required by Section 711.09 or 711.10 of the Revised Code to be approved by a planning commission.’

‘Sec. 711.091. The city or village engineer in the case of lands within a city or village, and the county engineer in the case of lands outside of a city or village, shall, upon written request by the owner of the land upon which the street has been constructed check the construction and if the engineer finds that such street has been constructed in accordance with the specifications set forth on the approved plat, and that such street is in good repair, then such finding, endorsed on the approved plat, shall constitute an acceptance of the street for public use by the city, village or county as the case may be, provided such street has been theretofore duly dedicated.’

“It would appear from the above quoted code provisions that the manner in which a street shown and dedicated on the plat of

a subdivision of lands outside a city or village may become a public street is by the county engineer endorsing on the plat a finding that the street has been constructed in accordance with the specifications set forth on the plat and that it is in good repair. Such being the case, the following questions have arisen in this county :

“1. In a case where the plat of a subdivision of lands outside of a city or village shows and contains a dedication of a new street, and such plat is recorded before the street has been improved, and the proprietor of the subdivision thereafter improves the street in accordance with the specifications shown on the plat, may the county engineer thereupon endorse on the plat the finding provided for in Section 711.091 ?

“2. If the answer to the preceding question is in the affirmative, should the county engineer endorse his finding on the record of the plat in the county recorder’s office or should such endorsement be placed on the original of the plat, which original presumably is returned to the owner after it has been recorded?

“I would appreciate having your opinion on the foregoing questions. Please also furnish me your opinion on the following question :

“Is it necessary for the county engineer to endorse his approval on a plat of a subdivision of lands outside a village or city in a case where the subdivision contains no new street or in a case where the new streets shown and dedicated on the plat have not been improved at the time the plat is filed for record with the county recorder?”

In addition to the sections of the Revised Code, which you have quoted, I deem it necessary to direct your attention to Section 711.10, Revised Code, relating to the platting of land in the unincorporated territory of a county. This section sets out certain powers given to the county regional planning commission with reference thereto. The following provisions appear to be pertinent :

“Whenever a county planning commission or a regional planning commission adopts a plan for the major streets or highways of the county or region, then *no plat* of a subdivision of land within such county or region, other than land within a municipal corporation or land within three miles of a city as provided in section 711.09 of the Revised Code, *shall be recorded until it is approved by such county or regional planning commission* and such approval is indorsed in writing on the plat. * * *

“Any such county or regional planning commission shall adopt general rules and regulations, of uniform application,

governing plats and subdivisions of land falling within its jurisdiction * * *

“* * * However, no county or regional planning commission shall adopt any rules or regulations *requiring actual construction of streets or other improvements* or facilities or assurance of such construction as a condition precedent to the approval of a plat of a subdivision unless such requirements have first been adopted by the board of county commissioners after a public hearing.” * * * (Emphasis added.)

I quote also a portion of Section 711.101, Revised Code :

* * * “Such rules and regulations may establish standards and specifications for the construction of streets, curbs, gutters, sidewalks, street lights, water mains, storm sewers, sanitary sewers, and other utility mains, piping, and other facilities, may require complete or partial installation of such improvements, and may make such installation a condition precedent to the sale or lease of lots in a subdivision or the issuance of a building permit for the improvement of a lot, and may require in lieu of actual construction a performance agreement and the furnishing of a performance bond or other guarantee or security for the purpose of assuring the installation of such improvements deemed necessary or appropriate in the public interest.” * * *

“Such rules and regulations may require the submission of plans and specifications for the improvements set forth in this section for approval as a condition precedent to the approval of a plat required by sections 711.05, 711.09, and 711.10 of the Revised Code, and may require the actual construction or agreement or assurance of such construction as a condition precedent to the approval required under said sections.”

Going back to Section 711.04 et seq. Revised Code, we find in Section 4, a provision that after a plat is completed it is to be duly acknowledged by the owner, and thereupon recorded in the office of the county recorder.

Section 711.05 provides in part :

“Upon the submission of a plat for approval, in accordance with section 711.04 of the Revised Code, the board of county commissioners shall certify thereon the date of such submission, and the approval of the board required by such section or the refusal to approve shall take place within thirty days thereafter or such further time as the applying party may agree to ; otherwise such plat is deemed approved and may be recorded as if bearing such approval. * * * ”

We turn then to Section 711.091 which you have quoted. This section presupposes that the planning commission has placed on the tendered plat its requirements as to improvements to be made immediately, or at designated times in the future, and has secured from the owner a performance bond or other security for the construction of the required improvements, and has thereupon endorsed its approval, and the plat has been filed and recorded.

Thereafter, the owner, having made the improvement of a street as required by the commission "in accordance with the specifications set forth on the approved plat," calls on the engineer for his approval which he endorses on the plat. That act, according to the words of the statute, "shall constitute an acceptance of the street for public use by the city, village, or county as the case may be, provided such street has theretofore been duly dedicated."

Since it is manifest that a plat after approval by the planning commission is entitled to record, and since the improvement of a street may be made after such recording, it seems to follow of necessity that the endorsement required of the engineer must sometimes be made after the plat has been recorded. However, there is certainly no authority to be found in the law whereby the engineer may make his endorsement *on the recorded plat*. The statute says that it must be "endorsed on the approved plat."

The original of the approved plat is presumably in the possession of the owner, and while no explicit provision can be found in the law, it is my opinion that having secured the engineer's certificate on his plat, the owner may very properly present it again to the recorder, and have the certificate entered on the record.

The foregoing would appear to be a sufficient answer to the two numbered questions contained in your letter. You raise the further question whether it is necessary for the engineer to endorse his approval on a plat of a subdivision where it contains no new street. Since the only matter as to which the engineer is authorized or required to certify is as to the proper improvement and condition of a street, his certificate on a plat not containing any new street designated for improvement would certainly not be required.

In specific answer to your inquiry, it is my opinion :

1. When a plat of land outside of a municipal corporation has been duly approved and filed for record in the office of the county recorder, and a street shown on such plat has been constructed in conformity with the specifications set forth on the same, the owner of such land may request the county engineer to check such construction, and if he finds that such street has been so constructed and is in good repair, it is the duty of such engineer under Section 711.091, Revised Code, to endorse such finding on the approved plat.

2. The engineer is without authority to enter such endorsement on the record of such plat.

Respectfully,

C. WILLIAM O'NEILL
Attorney General