



THE ROADRUNNER



July 2023

ANNOUNCEMENTS

Save the Date:

October 23-26, 2023 are the dates for the 2023 Annual TACERA Conference.

Do you have an article you would like to put in our newsletter? Send them to us at TACERA or

bryan.neaves@bellcounty.texas.gov

WHAT RIGHTS DOES A COUNTY IN TEXAS HAVE FOR CONTROL OF COUNTY ROAD RIGHT-OF-WAY?

We have all been there. Months of preparations for the new and improved County Road are now complete and shared in total with the Public and Commissioners' Court. As you advertise and seek bids for the imminent contract work, the one thing you were not expecting raises its ugly head; an adjoining landowner contacts the County Judge and/or Commissioner and proclaims that the County does not have the necessary permissions or right-of way to perform the work. The landowner is directed to contact the Road and Bridge Engineer to resolve this issue. Now, the attorney for the landowner contacts the Road and Bridge Engineer and seeks a meeting. The claims are that Mr. Landowner owns that land scheduled for improvement by the County roadway project. Further, the landowner claims he nor his "predecessors in title" ever gave an "easement" to the County for the roadway that the County has been maintaining for public use for a great period of years.

Everything spirals out-of-control; the project is now in chaos. Lots of County money has been spent for these preparations. All for nothing? Could it be? Who is right? Well, it is possible that EVERYONE is right!

After much study and consternation regarding the situation, it is found that the County has been maintaining this road for public use for so many years but there are no records in the County Clerks' office of any express easement or parcel acquisition for this road. Everyone understands that public funds cannot be used for private purposes so this must be a public road. There is a likelihood that the road right-of-way came about through acts buried in common law; implicit dedication which is a dedication of right of way for a specific use without being in writing.

The elements of implied dedication are:

- 1) Landowner induced a belief that the landowner intended to dedicate;
- 2) Landowner was competent to dedicate the road;
- 3) The Public relied on these acts and will be served through the dedication; and,
- 4) There was an offer and acceptance of the dedication.

Acceptance by the owner could have been as little as the fee-title owner's unequivocal act of allowing the public use of the road over an extended period. The Texas Transportation Code Section(s) 281.001-281.004 abolished this common law doctrine of implicit dedication in 1995 for counties of less than 50,000 population. The assumption is that a road taken over by a county of less than 50,000 cannot have been created after 1995.

Even with this recognized dedication of rights-of-way, use without a formal instrument evidencing the right by the County to operate as public road may and probably will be contested in today's litigious environment. Adjudication of the road will almost invariably wind up in the courts; not necessarily a bad thing.

The Texas Transportation Code Section 251.059 (1997) allows the Commissioners' Court of a county to establish a county road and:

- i. The layout of the road has been established by a jury of view;



Not all detention ponds do what they are supposed to do...



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- ii. The county road has been in continuous use for more than 30 years; and,
 - iii. Public funds have been expended and maintenance of the road for at least 10 of the last 20 years.
- It would appear the only way to advance this theory of establishment of a county road will be through suit in the courts.

The Texas Transportation Code Chapter 258 (2003, as amended in 2009) provided an opportunity for counties to set forth a process for adoption of an official county map, complete with an inventory of all publicly maintained roads and respective rights-of-way description. Most notably, the continuous maintenance requirement for an identified and inventoried roadway had to begin prior to September 1, 1981. However, the opportunities of Chapter 258 only applied to a county that initiates or completes the process before September 1, 2011; thence being abolished. That window has obviously passed.

Note: The author's home of Reeves County completed this process in 2012.

Regardless, the right-of-way of any road without a formal recorded instrument and found to be dedicated in common law is presumed to be in the form of an easement. (There has been at least one exception to this acknowledgement where the issue was adjudicated in court in Reeves County and the county of record was awarded fee-title interest in the judgement.) But broadly, with an easement and no formal dedication instrument, the county has acquired the right to operate and maintain a public roadway, nothing more and nothing less. The county now has the "dominant estate" to use for a road. Disputes still arise as to breadth of width of the "easement".

While we have discussed the creation of an easement through an implicit act, Statute of Frauds in the Business and Commerce Code Section 26 requires an Instrument of Conveyance in writing for the transfer of an easement signed by the conveyor. Exceptions are not found in the Property Code but only in case law. As stated, implicit dedication is buried in common law.

The real issues begin on the accommodation and permitting of public utilities within the roadway right-of-way (limits of easement) as defined in the Utilities Code Chapter 181. It appears, that the county has certain obligations to accommodate the location of utilities within this county road right-of-way. However, it is the author's position that those utilities must have an additional easement by instrument by the fee-title landowners for placement in implicitly dedicated county right-of-way. Experience has indicated that permitting of those utilities by the County without this provision for an additional utility easement situated inside of the county right-of-way comes at peril to the County. Whether a transverse crossing or a parallel alignment of the utility, may result in the fee-title owner filing an action against the county. Regardless of who prevails, the county loses just being in court. Quite frankly, the landowner might have a point since the county only has earned the right to maintain and operate a public roadway as holder of the dominant estate. While it is understood that the utility rights are subordinate to the needs of the transportation facility, the Utilities Code Chapter 181 does not address the difference between express dedication and implicit dedication for construction of the right-of-way and there is no explicit act by the fee-title owner ever indicating his authorization for any easement or right-of-way.

Further, certain private uses of this roadway right-of-way not particularly interfering with the County's right to maintain and operate a public roadway appears permissible to, and at the discretion of, the fee-title owner. Some of those uses that would not affect in the operation of the roadway might be farming, private signage, private utilities, survey pins in the midst of the roadway and more. For certain, the County does not have unilateral control of uses in the right-of-way.

There are few, if any, counties in the State of Texas which enjoy having express written conveyances on all their system of county road rights-of-way, alternatively relying on implicit dedication. Each county in Texas has probably developed some type of policy or practice to off-set the liability or expense to their county if a landowner contest arises. Whether it be filing an action in court or pleading with the landowner for understanding or even moving the road, there does not appear to be a perfect and right and superior effective way of handling the situation at hand. Recognition of the county's limitations in law regarding right-of-way is the first key factor in continued development and upgrade of our systems of county roads.

*Curtis D. Wilson, PE, RPLS is the Road and Bridge Engineer in Reeves County, Texas for the past three (3) years. He is a Professional Engineer and Registered Professional Land Surveyor in Texas and is not an attorney. **Please do not take any of the foregoing as legal advice.** The predicaments and research done for this article and opinions are based on 34 years as a public right-of-way surveying specialist, serving 15 years as a surveying consultant with TxDOT and nearly 43 years as a design engineer with cities, counties, and the State. Contact: cwilson@reevescounty.org 432-755-4339 (cell) 432-287-0500 (office)*



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A DAY WITHOUT SUNSHINE (A SHORT ETHICS TALE)

BN 5-23-23

“Sunny D” hired an engineer to perform an H&H study for their massive solar farm. The engineer performed the work and sealed civil plans, SW3P and a hydraulic study summarizing the results of the HEC-RAS analysis. Sunny D received the product from his engineer.



Sunny D furnishes the PDF formatted documents to the County. This was done to fulfill the abatement agreement between the County and Sunny D. The County reviewed the documents and was satisfied.

A disgruntled neighbor hired an Austin based engineer to review and analyze the hydraulic report. The hydraulic report was only 48 pages and furnished to the public as an open record. This data was unsatisfactory to the disgruntled parties because it did not go into enough detail. They contacted the County and asked for the HEC-RAS model, DTM, and other details that the Sunny D engineer might have done.

Pause... Are there shades of unethical practices in this case? Sometimes simple requests go by us and we do not see it until later. Some people try to manipulate public officials to get their way.

Resume... This story ends with the County responding to the disgruntled parties, “You may request that information from the Sunny D engineer who performed the work. He has an obligation to discuss the release of that information with his client. The County is satisfied with the submitted report and therefore will not participate in the request for that data.”

NACE 2023 THE TEXAS REPORT

Robert Berndt 4-25-23

The 2023 NACE Annual Conference was held at the Perdido Beach Resort in Orange Beach, Alabama from April 16 to April 20, 2023. Texas was represented by Joseph Jackson and Randy Skinner from Tarrant County Transportation Department, Stacy Slawinski from Fort Bend County, Lee Crowder from Galveston County, Zane Dunnam from McLennan County, Robert Berndt from TACERA and Joe Trammel, Rick Hatcher and Gil Rosado from Tarrant County Precinct One. The Texas group had 12 members strong including the spouses that attend the event. We also had several Texas companies attend from the private sector including Wheeler, Ergon & Applied Research Associates.



The highlight of the Conference was during the NACE Board of Director’s Meeting on Sunday morning. The Board of Director’s voted to give the State of Texas the 2026 April NACE Conference. TACERA is very excited and ready to get to work and host an amazing NACE Conference in the Lone Star State.

The Texas State Affiliate Dinner was at The Gulf in Orange Beach on Monday night. It was a great evening of food, refreshments and fellowship with our Texas friends and family.

The number of topics covered at the Conference are too numerous to mention but the attendees had their choice of three to four different topics during each program track. The one day in the Exhibit Hall brought companies from all over the



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United States. Your delegation made many contacts and hopes to bring new vendors to the TACERA conference in October 2023.

NACE 2024 will be held in Riverside County in Palm Springs, California from April 15 to April 18, 2024. Make sure you include money in your budgets to attend this event next year. The knowledge and contacts you will make at this Conference will enhance your professional career and give you the tools to perform your county job better. If you have any questions about the NACE Conference, please contact the TACERA office.

GETTING HOME SAFE

CD 11-16-22

Last night was an interesting night around my place. My oldest son and I are members of a volunteer fire department, and my youngest son has submitted his application to be on the volunteer fire department, also. Last night we were paged out to a wreck and my youngest son responded with his brother to what turned out to be a fatality wreck. He got to see first-hand what the effects of a crash can do to the human body. It's very sobering and can be very emotional. We talked through it after we got home so I could make sure he was emotionally at peace with what he had experienced.

He is also an engineering student, and we talked again this morning before he left for class. I was able to express to him that he was going to learn how to be an engineer so he could help prevent everything that he had experienced last night. Also, I have the utmost respect for first responders and the medical profession, but they show up after the crash. But as engineers, we get to help prevent those crashes from ever happening. After I had an opportunity to give him a hug and tell him how proud I am of him and send him on his way, I was also reminded of the urgency of our jobs as engineers.

Sometimes we get caught up in our busy schedules and arguments with everyday issues and need to be reminded of how important and rewarding our jobs as engineers really are. When you go home and see someone get out of their vehicle and walk in their house; remember you had a big part in that safe trip home.

Give your Loved ones a hug and try to prepare them for "life" and more importantly for "Eternal Life".

Members of the Newsletter Committee are:

Chad Davis	Wise Co
Bryan Neaves	Bell Co
Johan Petterson	DEC
Don Ward	Pav Restoration
Curtis Wilson	Reeves Co

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