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CASENOTE


"The law helps those who help themselves, generally aids the vigilant, but rarely the sleeping, and never the acquiescent."1

INTRODUCTION

Although the public usually acquires land through condemnation or prescription, dedication for public use is a significant third alternative.2 Common-law dedication has two requirements: (1) intent of the landowner, and (2) public acceptance.3

In Security Federal Savings & Loan Association v. C & C Investments,4 the Minnesota Court of Appeals decided whether the public had acquired an easement over one-third of a bank's property through the doctrine of common-law dedication. The court's decision attempted to clarify the two requirements necessary to establish a common-law dedication. This decision represents a positive refinement of the Minnesota case law.

As a result of Security Federal, parties bringing common-law dedication claims now have a greater burden in proving a landowner's intent to dedicate property, particularly in a commercial setting. This case allows greater protection of landowners' expectations in the private ownership of their property.

HISTORY OF COMMON-LAW DEDICATION

Dedication is an "appropriation of land for any general or public use, the owner reserving no rights incompatible with the full enjoyment of a public use thereof."5 The doctrine of common-law dedication originated in English common law.6 Under English common

3. Id. at 1407. The United States Supreme Court recognized the two requirements in City of Cincinnati v. White's Lessee, 31 U.S. (6 Pet.) 431, 440 (1832).
5. 2 G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY § 369, at 462 (1961).
6. Dedication apparently arose in England in recognition of public rights after
law, the lord of the manor held title to the land in a street or highway, subject to an easement of the public for a right of way.

Although the exact beginning of dedication as a method of conveying land is disputed, dedication was judicially recognized in England in 1713 and again in 1732.

In 1832 the United States Supreme Court described dedication as "a well-established principle of the common law . . . sanctioned by the experience of ages." American courts later expanded the doctrine of customary rights became obsolete. See id. § 369, at 463. The concept of custom was based on the theory that public uses which have existed since time immemorial are derived from an ancient legal right which has never been formally recorded. 12 HALSBURY'S LAWS OF ENGLAND §§ 406-07 (4th ed. 1975). To be immemorial, a custom "must have been in existence from a time preceding the memory of man," which was fixed by English law at 1189 A.D., the coronation of Richard I. Id. § 407. Although most localities "sacrificed" their peculiar customs so that England would be governed by "one uniform and universal system of laws," the Crown permitted some localities to follow their traditional customs in contravention of the common law. 1 W. BLACKSTONE, COMMENTARIES *74.

7. The "lord of the manor" was the "grantee or owner of a manor." BLACK'S LAW DICTIONARY 944 (6th ed. 1990).


9. Tiffany holds that at its inception it appeared to be confined to dedication of land for highway uses . . . . Digby holds that dedication stems from a mere right to go upon the land for the purpose of doing something essential to the common good, such as pasturage. The meaning of dedication as stated by Blackstone is the recognition of "customary rights arising out of the necessities of the thing or of the public."


Although the doctrine of dedication was first judicially recognized in England in the early 1700s, it "had its roots in the common law for centuries" before these cases. Watson v. Chicago, M. & St. P. Ry., 46 Minn. 321, 326, 48 N.W. 1129, 1130 (1891); see also infra notes 10-11.

10. "If a vill be erected, and a way laid out to it, if there be no other way but that to the vill . . . it shall be deemed a public way." The Queen v. Inhabitants of Hornsey, 10 Modern 150, 150, 88 Eng. Rep. 670, 670 (1713) (emphasis by the court).

11. Where the plaintiff had laid out a street, it was "certainly a dedication to the publick, so far as the publick has occasion for it, which is only for a right of passage. But it never was understood to be a transfer of the absolute property in the soil." Lade v. Shepherd, 2 Strange 1004, 1004, 93 Eng. Rep. 997, 997 (1732).


Although at the time of the publication of the laws of William the Conqueror there were but four great roads in England called the King's highways, yet no one can doubt that there were, even at that time, innumerable thoroughfares, and many squares and open spaces, which had been dedicated to the use of the people at large, for passages and promenades . . . .

Post v. Pearsall, 22 Wend. 425, 433 (N.Y. 1839), quoted in Appleton, 219 N.Y. at 164, 114 N.E. at 76.

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trine by applying it to churches, public springs, commons, parks, wharves and landing places, cemeteries and most recently, beaches.

Today, the public may acquire the right to use land by virtue of a statutory or common-law dedication. A statutory dedication is effected by a plat executed and recorded in strict compliance with a state statute. Failure to fully meet the technical requirements of


14. See, e.g., McConnell v. Trustees of the Town of Lexington, 25 U.S. (12 Wheat.) 582 (1827) (Legal title to spring stayed with village due to public use.).

15. See, e.g., City of Cincinnati v. Lessee of White, 31 U.S. (6 Pet.) 431 (1832) (Dedication of a common rests on the same principle as the public's right to use streets.). A "common" was a "[t]ract of land set apart by city or town for use by general public." BLACK's LAW DICTIONARY 274 (6th ed. 1990). Commons were generally used for common pasturage, and are analogous to today's parks. Id.

16. See, e.g., Poudler v. City of Minneapolis, 103 Minn. 479, 115 N.W. 274 (1908) (upholding appropriation of land set aside for public use as a park).

17. See, e.g., Village of Mankato v. Willard, 13 Minn. 13 (1868) (upholding dedication of land used as a public landing).

18. See, e.g., Stockton v. Mayor of Newark, 42 N.J. Eq. 531, 9 A. 203 (Ch. 1887) (holding that land dedicated to a city as a burial ground could not be used by the city for other purposes), rev'd on other grounds, 44 N.J. Eq. 179, 14 A. 630 (1888).

19. See, e.g., Gion v. City of Santa Cruz, 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970) (finding a strong public policy encouraging the public use of beaches); Seaway Co. v. Attorney Gen., 375 S.W.2d 923 (Tex. Civ. App. 1964) (finding a dedication where beach was opened to the public and was maintained with public funds).

Other jurisdictions have established public rights to private beaches based on the doctrine of custom. See, e.g., United States v. St. Thomas Beach Resorts, 386 F. Supp. 769 (D.V.I. 1974) (preserving what had become a "tradition" and a "right of the public" to use the beach), aff'd, 529 F.2d 513 (3d Cir. 1975); City of Daytona Beach v. Tona-Rama, Inc., 294 So. 2d 73 (Fla. 1974) (holding that the owner's use of property may not interfere with the public's use of the shore); State ex rel. Thornton v. Hay, 254 Or. 584, 462 P.2d 671 (1969) (finding public's custom of using the beach sufficient to serve as notice to potential purchasers of shoreland property); Moody v. White, 593 S.W.2d 372 (Tex. Civ. App. 1979) (recognizing the doctrine of custom). For a discussion of custom, see supra note 6.

20. To effect a statutory dedication in Minnesota, an instrument of dedication must be written on a plat which contains "a full and accurate description of the land platted and set[s] forth what part of the land is dedicated . . . to whom and for what purpose." MINN. STAT. § 505.03, subd. 1 (1990). The plat must be certified by the surveyor and approved by the city council or town board. Id. Plats executed in this manner and recorded with the county recorder "shall operate to convey the fee of all land so donated, for the uses and purposes named or intended, with the same effect, upon the donor and the donor's heirs, and in favor of the donee, as though such land were conveyed by warranty deed." Id. § 505.01.

The dedication of roads to the public is regulated by MINN. STAT. § 160.05 (1990):

When any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road.
the statute will not necessarily invalidate the transfer. A defective statutory dedication may be sufficient under common law.21

Minnesota law has not developed uniquely. The history of common-law dedication has been similar throughout the states.22 In recent years, states have increasingly attempted to define the two requirements of intent and acceptance.23 However, the present state of the law in all states, including Minnesota, is still unclear. The lack of clarity in the law is due in large part to the lack of a concise definition of the intent necessary for common-law dedication. While many courts agree that intent must be shown clearly and unequivocally, no court has defined the "clear and unequivocal" standard itself.

The Minnesota courts first attempted to define the necessary intent more than a hundred years ago:

The vital principle of a common-law dedication of land for public use is the intention to dedicate, and, whenever this is unequivocally manifested, the dedication is complete, so far as the land-owner is concerned. . . . The intention to dedicate should clearly and satisfactorily appear.24

In 1945 the Minnesota Supreme Court attempted to clarify the intent necessary to establish common-law dedication. Nevertheless, the definition was still rather general:

A dedication rests upon assent and not upon prescription. . . . The inference of dedication is more readily permissible where the public use has been long and continued, but the public use need not be

authority, it shall be deemed dedicated to the public to the width of the actual use and be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not.

Id. § 160.05, subd. 1. The courts have broadly interpreted the criterion of public use under this statute. See, e.g., Cass County v. Dorholt, No. C9-90-1553, slip op. at 3 (Minn. Ct. App. Feb. 5, 1991) ("Public use is established if the road was open to any member of the public."); Town of Belle Prairie v. Kliber, 448 N.W.2d 375 (Minn. Ct. App. 1989) (holding that use of road by only one family and three other individuals was sufficient to uphold finding of statutory dedication).

21. See Doyle v. Babcock, 182 Minn. 556, 560, 235 N.W. 18, 20 (1931) (holding that the common law gave effect to the dedication of a plat even though the plat did not conform to the statute).

22. See, e.g., Smith v. State, 248 Ga. 154, 160, 282 S.E.2d 76, 85 (1981) (Public's long, uninterrupted use of a beach was enough to imply both offer and acceptance.); Seaway Co., 375 S.W.2d at 936 (estopping the owner from denying a dedication where the owner's unequivocal acts or declarations showed an intent to dedicate and the public acted on "the faith of such dedication"); City of Norfolk v. Meredith, 204 Va. 485, 489, 132 S.E.2d 431, 434 (1963) (stating the necessity of finding an offer to dedicate and an acceptance of that offer before a right of way vests in the public); Harris v. Commonwealth, 61 Va. (20 Gratt.) 835, 837-39 (1871) (For both express and implied dedication, the owner's offer and public's acceptance are necessary; offer and acceptance can be implied from the circumstances.).

23. See infra notes 33-34, 41-50 and accompanying text.

for the period of the statute of limitations. All that is required is that the circumstances be such as to permit the inference clearly and unequivocally.\(^{25}\)

To establish the necessary intent, any act of the owner which allows an inference to be drawn clearly and unequivocally is sufficient to constitute a common-law dedication.\(^ {26}\)

Although, as a requisite for common-law dedication, intention must appear to exist, it need not always exist in fact in the mind of the landowner, but may be ascertained from acts on his part which unequivocally and convincingly carry with them a plain implication of an intention to dedicate a road to public use.\(^ {27}\)

In many cases, the courts have not required that the intent be clear and unequivocal. Instead, acquiescence to public use has been sufficient to imply intent.

Recent Minnesota cases have been inconsistent, sometimes holding that the owner’s “mere acquiescence” to public use is enough to demonstrate an intent to dedicate,\(^ {28}\) other times holding that the owner’s intent must be “clear and unequivocal.”\(^ {29}\) In recent years,
jurisdictions in other states have also vacillated between these two tests. The case law varies not only among the jurisdictions; it also varies within jurisdictions.30

30. See 4 H. TIFFANY, REAL PROPERTY § 1102, at 583 (3d ed. 1975). Courts in some jurisdictions have held that an owner’s long acquiescence towards public use of his or her land is sufficient for dedication. Id.; see also id. at 588 n.11 (listing eighteen cases from thirteen states which hold that acquiescence is enough evidence of the owner’s intent to dedicate); Diamond Match Co. v. Savercool, 218 Cal. 665, 24 P.2d 783 (1933) (intent to dedicate implied from long acquiescence in use of land as a highway).

On the other hand, courts in other jurisdictions have held that mere acquiescence is not sufficient to show an intent to dedicate.

There are numerous decisions to the effect that the mere fact that land is used by the public for a greater or less time does not in itself show a dedication thereof by the owner, though the use is with the owner’s knowledge; but the owner’s acquiescence in such user of the land is a fact to be considered in connection with other facts . . . .
ELEMENTS OF COMMON-LAW DEDICATION

There are two elements that are necessary to establish a common-law dedication: (1) intent by the owner to surrender his or her land to the public, and (2) acceptance of that use by the public.31 Because both an offer and acceptance are necessary, courts often draw an analogy between common-law dedication and the law of contract.

The landowner’s . . . intent to dedicate a road to public use is like the making of an offer to enter into a contract. When the offer is accepted, the contract is complete. Likewise, when the landowner’s dedication of a road is accepted by the public, the dedication is complete and is not subject to revocation.32

In modern American jurisprudence, the landowner’s intent is the foundation of common-law dedication.33

A common-law dedication may be either express or implied.34 Express dedication requires an “explicit or positive declaration or manifestation of an intention to surrender the land.”35 In the absence of an express declaration, an implied dedication may be effected whenever the landowner intends to devote the land to a public use.36 In-

31. Minnesota also recognizes these requirements. E.g., Daugherty, 243 Minn. at 574, 68 N.W.2d at 868; Keier, 219 Minn. at 374, 18 N.W.2d at 35; Morse v. Zeize, 34 Minn. 35, 37, 24 N.W. 287, 288 (1885).
32. Daugherty, 243 Minn. at 575, 68 N.W.2d at 868; see also Anderson, 229 Minn. at 84, 38 N.W.2d at 220 (“When the landowner’s dedication of a road is accepted by the public, the dedication is complete and is not subject to revocation.”).
33. Intent to dedicate is essential since a dedication is a voluntary transfer.

The basic element of dedication is the owner’s intent—and not public use for the period of prescription—and when that intent is clearly manifested the dedication against the owner becomes effective and irrevocable as soon as we have a public user of a degree and character sufficient to indicate a public acceptance . . . .

Anderson, 229 Minn. at 84, 38 N.W.2d at 220.

Prescriptive easements, in contrast, rely on a period of use which is adverse to the true owner. A person claiming a right-of-way by prescription must show that the use was “hostile, or adverse, and under a claim of right, and that it [was] actual, open, continuous and exclusive” for a period of 15 years. Burns v. Plachecki, 301 Minn. 445, 448, 223 N.W.2d 133, 135 (1974).

34. The owner’s intent can be either express or implied but “[i]n both it is necessary and essential that there be a surrender or an appropriation of the land by the owner to the public use.” Hurley v. City of West St. Paul, 83 Minn. 401, 407, 86 N.W. 427, 430 (1901). “A showing of an intent to dedicate is indispensable, and without it, express or implied, there can be no valid dedication.” Id.; see also Klenk v. Town of Walnut Lake, 51 Minn. 381, 385, 53 N.W. 703, 704 (1892) (inferring intent from conduct); Morse, 34 Minn. at 38, 24 N.W. at 288 (issue of intent a question of fact); Case v. Favier, 12 Minn. 89, 97 (1866) (intent determined by jury); Wilder v. City of St. Paul, 12 Minn. 192, 209 (1866) (Issue of intent may be proved by evidence of the owner’s actions, but is not subject to a presumption of law.).
35. Hurley, 83 Minn. at 407, 86 N.W. at 430.
36. Mueller v. Drobny, 225 Minn. 338, 342, 31 N.W.2d 40, 42 (1948). Implied dedication is evidenced “by some act or course of conduct on the part of the owner
tent to dedicate may be negated, however, by evidence that the use was merely permissive.37 In many cases, intent is found where there is public reliance on a right-of-way of necessity.38 Courts have often expressed the idea that common-law dedication operates as an estoppel, not as a grant.39 A showing of an intent to dedicate is indispensable, and without it, express or implied, there can be no valid

from which legal inference of the intent may be drawn." Hurley, 83 Minn. at 407, 86 N.W. at 430.

Such intent need not actually exist in fact in the landowner’s mind, but may be inferred from “acts and visible conduct” which show a “plain intent to dedicate.” Daugherty, 243 Minn. at 574, 68 N.W.2d at 868 (inferring intent where the owner permitted road to be improved by plaintiff and at public expense).

37. “[M]ere permissive use of land as a street or the like, where the user is consistent with the assertion of ownership by the alleged dedicatory, does not of itself constitute a dedication nor demonstrate a dedicatory intention.” 11 E. MCQUILLAN, THE LAW OF MUNICIPAL CORPORATIONS § 33.32, at 717 (3d ed. 1983). Permissive use, or a license, is often difficult to distinguish from acquiescence. In In re Stees, 142 Minn. 340, 172 N.W. 219 (1919), the Minnesota Supreme Court adopted the “common-sense principle” expressed by the Virginia Supreme Court:

“A permission to pass over land may prove an intention to dedicate, or a mere license, revocable at the will of the owner; and we think that the mere permission to pass over land ought ... to be regarded as a license. For why shall we infer that an individual makes a gift of his property to the public from an equivocal act, which equally proves an intention to grant a mere revocable license?”

Id. at 344, 172 N.W. at 221 (quoting Commonwealth v. Kelly, 49 Va. (8 Gratt.) 632, 635 (1851)).

38. See, e.g., Bengtson v. Village of Marine on St. Croix, 310 Minn. 508, 509, 246 N.W.2d 582, 584 (1976) (finding intent to dedicate where “the road was the only way for visitors to reach the three families whose houses faced on it”); Mueller, 225 Minn. at 341, 31 N.W.2d at 42 (finding intent to dedicate where road was the only means of access during the winter months); Carpenter v. Gantzer, 164 Minn. 105, 106-07, 204 N.W. 550, 550-51 (1925) (finding intent to dedicate where several families used trail to reach their farms and haul their produce).

39. If the owner’s acts imply that he or she intended to dedicate property to the public, and the public relies on those acts, then the owner is estopped to deny the dedication. “ ‘[I]f the owner of the servient estate intentionally ... leads the public to believe that he has dedicated the premises to public use he will be estopped from contradicting his representations to the prejudice of those whom he may have misled.’ ” Allen v. Village of Savage, 261 Minn. 334, 339-40, 112 N.W.2d 807, 811 (1961) (quoting Wilder v. City of St. Paul, 12 Minn. 192, 200 (1866) (emphasis by the court)); Stees, 142 Minn. at 343, 172 N.W. at 220 (holding that an owner’s “acquiescence in the use by the public of part of his premises for travel may be of such a character and duration that he should be held estopped to deny the existence of an easement”). Courts have applied the doctrine of estoppel even where the property owner passively assents to the public’s use of the land. E.g., Gardner v. Hope, 248 Ky. 270, 58 S.W.2d 355 (1933); Town of Ruston v. Adams, 9 La. App. 618, 121 So. 661 (1928); Johnson v. Ferguson, 329 Mo. 363, 44 S.W.2d 650 (1931).

Common-law dedication is an application of the doctrine of estoppel in pais. Allen, 261 Minn. at 340, 112 N.W.2d at 811; see also Headley v. City of Northfield, 227 Minn. 458, 463, 35 N.W.2d 606, 609 (1949) (“A common-law dedication operates as an estoppel and not as a grant, but the effect thereof is to create only such an estate or right in the public as is necessary to enable it to enjoy the uses for which the dedica-
dedication.40

Public acceptance can be shown by "public user,"41 such as by travel on the dedicated road,42 or by acts of public officials, such as improving and maintaining the road.43 In most jurisdictions, either will suffice.44 A "public user" may be established by a relatively small number of people,45 and is "the very highest kind of evidence" of public acceptance of a dedication.46

Dedication, contrary to the holding of certain cases, is not based on estoppel. It is of itself a distinctive common-law doctrine which originated much earlier in the English law than the doctrine of estoppel and is perfectly comprehensible without reference to the latter, although the essential elements of the latter may be present in a given case.

But see Anderson v. Birkeland, 229 Minn. 77, 38 N.W.2d 215 (1949):

Dedication, contrary to the holding of certain cases, is not based on estoppel. It is of itself a distinctive common-law doctrine which originated much earlier in the English law than the doctrine of estoppel and is perfectly comprehensible without reference to the latter, although the essential elements of the latter may be present in a given case.

The reasoning in Anderson is logical, but the case does not represent the majority view. The Anderson court noted that the doctrine of common-law dedication rests on a firmer foundation if it is based on the owner's intention and not on an estoppel theory. Id. at 85 n.2, 38 N.W.2d at 220 n.1.

40. Hurley v. City of West St. Paul, 83 Minn. 401, 407, 86 N.W. 427, 430 (1901); see also supra note 34.

41. "User" is defined as "[t]he actual exercise or enjoyment of any right, property, drugs, franchise, etc." BLACK'S LAW DICTIONARY 1543 (6th ed. 1990). The term "user" is preferred to "use" in implied dedication cases because it "conveys the idea of use that establishes a property right." Livingston, Public Access to Virginia's Tidelands: A Framework for Analysis of Implied Dedications and Public Prescriptive Rights, 24 Wm. & MARY L. REV. 669, 691 n.84 (1983).


43. See MINN. STAT. § 160.05, subd. 1 (1990), which provides in pertinent part:

When any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the public to the width of the actual use and be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not.

Id.

44. See, e.g., Lowry v. Rosenfeld, 213 Ga. 60, 63, 96 S.E.2d 581, 584 (1957) (requiring public street to be accepted by governmental authorities for the public use to which it was dedicated); Blank v. Park Lane Center, Inc., 209 Md. 568, 576, 121 A.2d 846, 848–49 (1956) (public use of a way for many years not sufficient to raise the presumption of acceptance by public authorities); Emanuelson v. Gibbs, 49 N.C. App. 417, 419, 271 S.E.2d 557, 558–59 (1980) (requiring public acceptance to be made by "proper public authorities . . . in some recognized legal manner").

45. See Anderson v. Birkeland, 229 Minn. 77, 38 N.W.2d 215 (1949), where the court observed:

It is the right of travel by all the world, and not the exercise of the right, which constitutes a road a public highway, and the user by the public is sufficient if those members of the public—even though they be limited in number and even if some are accommodated more than others—who would naturally be expected to enjoy it do, or have done so, at their pleasure and convenience.

Id. at 82, 38 N.W.2d at 219.

46. Morse v. Zeize, 34 Minn. 35, 37, 24 N.W. 287, 288 (1885) (quoting Kennedy v. Le Van, 23 Minn. 513, 518 (1877)).
Problems can arise, however, concerning the effect of an acceptance by public user upon the duty of local authorities to maintain public thoroughfares.

It has been argued that the creation of such a duty through public use alone would contravene public policy, on the rationale that a local government should not have the burden of maintenance cast upon it without its consent and quite possibly without its knowledge. Conversely, some authorities maintain that since the local government is merely the instrument of the general public, if public use has been sufficient to bind the dedicator it should be sufficient to impose any burdens incident to the creation of a public way . . . .

Minnesota appears to have adopted the second argument. When the evidence is conflicting as to whether there was an intent to dedicate or whether the public accepted the dedication, the issue is "peculiarly one for the finder of fact."49

Security Federal Savings and Loan Association (“Bank”) is the fee owner of a parcel of property (“Section”)50 in the city of St. Cloud, Minnesota (“City”). A dispute arose regarding the public’s use of the Bank’s parking lot which occupies the eastern part of the Bank’s property.

Since 1972,52 the Section was used continuously as a convenient access road from a busy street south of the Bank to an adjoining

47. Note, supra note 2, at 1413 (footnotes omitted).
48. See Neill v. Hake, 254 Minn. 110, 121, 95 N.W.2d 821, 829 (1958) (After property has been dedicated and accepted, the municipality becomes the trustee for its use.); Ellsworth v. Lord, 40 Minn. 337, 339, 42 N.W.2d 389, 390 (1889) (The municipality is bound to keep the land in “suitable repair, and . . . free from obstructions, in order to give full effect to the dedication and preserve the rights of the public.”). But see infra text accompanying note 86.
51. Id.
52. The Center opened in 1965. Id. In connection with the development of the Center, the owner of the property leased to Wendy’s attempted to persuade Plaza Park State Bank, Security Federal’s predecessor in title, to become part of the Center. When negotiations broke down, the owner placed parking blocks in a continuous line around the east, north, and west boundaries of the bank’s parcel in an attempt to physically isolate the bank from the rest of the Center. Appellant’s Brief at 6–7, Security Fed., 448 N.W.2d at 83 (No. C5-89-409). These parking blocks remained in place until 1972 but gaps in the line allowed cars to pass across the northern boundary between the bank and the Center. Security Fed., 448 N.W.2d at 85.
shopping center ("Center").\textsuperscript{53} There are many other access roads to the Center.\textsuperscript{54} The public's use of the Section was not out of necessity, but simply for convenience. The Bank posted no notices prohibiting public access or indicating that this was private property, and took few steps to prevent the public from using the Section.\textsuperscript{55}

In 1976, the Bank entered into a temporary easement agreement granting Wendy's, a neighboring landowner, a limited right of ingress through the Section.\textsuperscript{56} The agreement continued until December 16, 1985, when the Bank made plans to reconfigure the parking lot.\textsuperscript{57} In 1986, the Bank brought suit to quiet title to this parcel.\textsuperscript{58}

The trial court found that the public had come to rely on the Section as an entrance to the Center, and that the neighboring businesses would be adversely affected if access to the Section were closed.\textsuperscript{59} On that basis, the trial court found that the Bank had dedicated the Section to the public and that the public had acquired an easement under the doctrine of common-law dedication.\textsuperscript{60}

The issue raised on appeal was whether the trial court erred in

\textsuperscript{53} When the Center opened in 1965, Plaza Park State Bank declined to join the Center's merchant association. \textit{Id.} Security Federal, however, does participate in the merchant association. The Bank, Security Federal, appears to be an integral part of the Center. Appellant's Brief at 6.

\textsuperscript{54} Traffic studies submitted by the respondent showed at least eight entrances to the Center other than through the Section. Appellant's Brief at 28. The main entrance is 400 feet west of the Section on Division Street. \textit{Id.} at 29.

\textsuperscript{55} Security Fed., 448 N.W.2d at 86. The Bank did paint parking lot lines, which indicated that the Section was a parking lot for Bank customers, not an access road for the general public. \textit{See} Appellant's Brief at 26. The Bank offered testimony that it allowed the public to drive through the Section because it was in the Bank's self-interest both to give free access to its customers and to allow others to pass through. The Bank hoped that people passing through would stop and do business at the Bank. Security Fed., 448 N.W.2d at 88.

\textsuperscript{56} Security Fed., 448 N.W.2d at 86. The Temporary Easement Agreement gave Wendy's a limited right of ingress for a period of six months at a monthly rental of fifty dollars. At the end of six months, the Agreement was extended at the Bank's option, and continued on a month-to-month basis for almost ten years. Appellant's Brief at 10-11.

\textsuperscript{57} Appellant's Brief at 24.

\textsuperscript{58} Security Fed., 448 N.W.2d at 86. Originally, several respondents claimed that they had acquired a prescriptive easement over the Section, or possession of the Section by adverse possession. The trial court specifically rejected these claims. \textit{Id.} Appellant's Brief at A-37. Shortly before trial, and without amending their pleadings, the respondents raised the additional claim that the public had acquired an easement over the Section by common-law dedication. Appellant's Brief at 2. The Bank argued on appeal that the trial court erred in allowing this procedure. \textit{Id.} at 34-35. The court of appeals did not address the procedural issue.

\textsuperscript{59} Security Fed., 448 N.W.2d at 86. The court's finding was based on a traffic study conducted between 1976 and 1986, which indicated that more than 2,000 vehicles per day entered the Center through the Section, and between 89 and 274 vehicles per day exited the Center through the Section. \textit{Id.} at 85-86.

\textsuperscript{60} \textit{Id.} at 86.
determining that the Bank impliedly intended to dedicate the Section due to the Bank's long acquiescence to the public's use of the Section. The Minnesota Court of Appeals reversed, holding that the trial court's decision was "clearly erroneous."

The Minnesota Court of Appeals found that the Bank's acts and conduct did not "unequivocally and convincingly" indicate an intent to dedicate "nearly a third of its land to the public as a roadway." The appellate court pointed out that the trial court too easily dismissed evidence of the Bank taking control over its property. For example, the trial court mentioned only as an "after-thought" the written easement agreement between the Bank and Wendy's. The appellate court found this agreement to be "just one example of [the Bank's] assertion of its property rights over the Section."

The appellate court recognized the line of cases which hold that an owner's acquiescence is enough to show intent. The court did not expressly reject those cases, but rejected their reasoning in the context of this case. Indeed, the court fashioned a narrow and fact-specific holding:

[The private and public use involved here, through a section of a parking lot adjoining a modern shopping center complex, is not a sufficient basis for a finding of implied intent to dedicate. . . . The

61. Id.
62. Id. at 86-87. The appellate court rejected the trial court's finding that the Bank's intent to dedicate the Section to public use was "implied through its long practice of allowing the public to use" the Section as an access road to various stores. Id. at 87.
63. Id. The appellate court concluded that substantial evidence existed in the record to establish that the Bank "exercised dominion and control over the Section." Id. at 89. This evidence strengthened the Bank's assertion that it did not intend to dedicate the Section to the public.

The court cited two Minnesota cases to support the proposition that the owner's intent must be unequivocal and convincing. Id. at 87 (citing In re Stees, 142 Minn. 340, 344, 172 N.W. 219, 221 (1919); Village of White Bear v. Stewart, 40 Minn. 284, 287, 41 N.W. 1045, 1046 (1889)). The appellate court stated that "the mere acquiescence of [the Bank] . . . does not support a finding or conclusion that [the Bank] had the intent necessary for a common-law dedication." Id.
64. Id. at 88-89.
65. Id. at 89. For the details of the easement agreement see supra note 56.
66. Security Fed., 448 N.W.2d at 87 (citing Dickinson v. Ruble, 211 Minn. 373, 375, 1 N.W.2d 373, 374 (1941); Klenk v. Town of Walnut Lake, 51 Minn. 381, 385, 53 N.W. 703, 704 (1892)); see also supra note 28. The court acknowledged that, in accordance with this precedent, the trial court "relied on its findings that 'millions of cars' have used the Section in travelling to and from the Center and that appellant did not prevent public access or notify the public that the Section 'was for exclusive use of customers of Security Federal.' " Security Fed., 448 N.W.2d at 87.
67. Security Fed., 448 N.W.2d at 87 ("It is true that 'acquiescence, without objection, in the public use for a long time, is such conduct as proves and indicates to the public an intention to dedicate.' " (quoting Klenk, 51 Minn. at 385, 53 N.W. at 704)).
68. Id.
character and extent of the use involved here, the nature of the surrounding land and the land itself, and the circumstances of this case prevent any implication that [the Bank] intended a dedication.69

The court pointed out that other jurisdictions specifically hold that no common-law dedication occurred when the public used a parking lot as a convenient access road to other stores.70 The court specifically relied on two Maryland cases to support the conclusion that the Bank did not intend to dedicate the Section.71

In Blank v. Park Lane Center, Inc., the owner of a large commercial development constructed walls and fences along the border of its property which effectively cut off the plaintiff’s stores from the rest of the development. The plaintiffs claimed that the “way” or “thoroughfare” to the development, which the plaintiffs’ customers had used to access their stores, was dedicated either to the public or to them.72 The Maryland Court of Appeals (that state’s highest court) disagreed and found that “there was ample evidence to support the... conclusion that there was never any intention to dedicate the so-called way or thoroughfare.”73

In Association of Independent Taxi Operators v. Yellow Cab Co., the Pennsylvania Railroad Company constructed a train station in Baltimore, Maryland.74 The station was accessed by a driveway, also constructed by the Pennsylvania Railroad Company, which connected two public roads. The railroad company leased the inside lane of the driveway to the Yellow Cab Company. The lease gave Yellow Cab the exclusive right to solicit the patronage of passengers leaving the station.75 The plaintiffs, owners and operators of competing taxicab companies, claimed that the driveway had been dedicated to the public since “the general public... used it as a cut-through” between the two public streets.76 The Maryland high court rejected this

69. Id. (citation omitted).
70. Id. at 88. The court cited: Thrash v. Wood, 215 Ga. 609, 613–14, 112 S.E.2d 578, 581 (1960) (holding for defendant landowner who fenced in his property that had previously been used for parking after plaintiff refused to pay rent); Lowry v. Rosenfeld, 213 Ga. 60, 63, 96 S.E.2d 581, 583–84 (1957) (holding that permitting customers to park on property does not constitute a dedication without the owner’s intent, even where the parking lot is maintained by the county); Blank v. Park Lane Center, Inc., 209 Md. 568, 574, 121 A.2d 846, 848 (1956) (determining that the intent of the owner to dedicate the property is the governing test).
72. Blank, 209 Md. at 572–73, 121 A.2d at 846–47.
73. Id. at 577, 121 A.2d at 849.
74. Association of Indep. Taxi Operators, 198 Md. at 186, 82 A.2d at 108.
75. Id. at 188–89, 82 A.2d at 109.
76. Id. at 189, 82 A.2d at 110.
argument:

It seems to be perfectly clear that the purpose of the driveway was to afford an ingress and egress to the Railroad property by those persons having business with the Railroad. . . . [I]t is entirely impracticable (even if it would be good business or good common sense) for the employees of the Railroad to stop each vehicle entering the drive to enquire whether it is merely passing through, or whether the occupants have business with the Railroad. . . . The evidence shows that the Railroad paves the drive, polices it, lights it, keeps it in repair, and pays taxes on it. Merely because it did not put up a sign forbidding general public use, or did not adopt some wholly impractical method of trying to ascertain the purpose of any vehicle entering the driveway, does not indicate an intention to dedicate. The leaving open of land as a means of access to the owner's premises and thereby permitting the public to use it for passage is slight, if any, evidence of such an intention.77

Even though the property owners in each of the Maryland cases did nothing to forbid public use, the Maryland court held that the intent necessary for common-law dedication was not present. The court of appeals in Security Federal found these holdings persuasive.78

As in the two Maryland cases, the use that the Bank contemplated for its property was for a specific clientele, not for the general public.79 The question of the Bank's intent is further clarified by the positive actions the Bank took to establish control over its property.80 Although the trial court mentioned those actions only as an after-thought, the appellate court relied heavily on that evidence to disprove the Bank's intent to dedicate the Section.81

Because the appellate court held that there was no intent to dedicate, the court did not discuss extensively the issue of the public's acceptance of the Section. The court rejected the trial court's deter-

77. Id. at 190-91, 82 A.2d at 110-11.
78. Security Fed. Sav. & Loan Ass'n v. C & C Invs., Inc., 448 N.W.2d 83, 88 (Minn. Ct. App. 1989). "Here, as in Blank, the evidence showed that some of the general public used the Section as a convenient shortcut, but the testimony did not distinguish these cars from patrons of the commercial area. Nor should appellant have attempted to make such a distinction here." Id.
79. Id. The Bank took care of the parking lot and allowed the traffic to drive through the Section in an effort to generate new business. Id. The fact that the Bank did not post signs or attempt to discover the purpose of each driver who entered the Section was irrelevant since to do so would be "wholly impractical." Id. (quoting Association of Indep. Taxi Operators, 198 Md. at 191, 82 A.2d at 110). For reasons similar to those articulated by the Maryland Court of Appeals (that state's highest court) in Blank and Association of Independent Taxi Operators, the court in Security Federal decided that "[t]he character and extent of the use here . . . clearly indicate that the evidence was insufficient to support the trial court's findings on intent." Id.
80. Id. at 89 (describing the Bank's easement agreement with Wendy's); see also supra notes 63-64 and accompanying text.
mination that the public accepted the dedication "through its 'long
time use' of the Section to gain access to businesses other than app-
pellant's." The court concluded that this requirement was not met
since the City failed to assert rights in the property and denied any
responsibility for the property's maintenance and repair. Indeed,
the court found that the trial court's decision would, in effect, "re-
quire appellant to subsidize a public road." The court rejected this
result "as a matter of policy."84

The appellate court stated that the City's lack of interest in the
Section and its "failure . . . to assert rights in the alleged public ease-
ment is evidence of a lack of public acceptance."85 The court noted,
however, that property can be accepted by the public without the
local government's agreement to maintain and repair the property.
"Although local government acceptance of land is not mandatory to
establish a common-law acceptance, . . . the failure of local authori-
ties to assert rights . . . is evidence of a lack of public acceptance
. . . ."86 Thus, in Security Federal, the government's refusal to take
responsibility for the maintenance of the Section was evidence of a
lack of public acceptance.

Although the court preferred the stricter "clear and unequivocal"
test, it did not indicate when the test should be applied. Nor did it
overrule the cases standing for "mere acquiescence."

ANALYSIS

Minnesota case law dealing with common-law dedication has been
inconsistent, alternating between the "clear and unequivocal" and
the "mere acquiescence" tests.87 Consequently, a court may use
either test in deciding the case before it. A court may reach a "de-
sired" conclusion by merely selecting appropriate supporting
precedent.

The court in Security Federal applied the "clear and unequivocal"
test: "[T]he evidence in this case does not support a finding that the
acts and conduct of [the Bank] unequivocally and convincingly indicate
an intent to dedicate nearly a third of its land to the public as a road-
way."88 The appellate court concluded that the Bank encouraged
public use of its property in the hope of increasing business and that
such use was simply permissive.89 Thus, in fairness, the Bank

82. Id. at 87.
83. Id. at 89.
84. Id.
85. Id.
86. Id.
87. See supra note 29.
88. Security Fed., 448 N.W.2d at 87 (emphasis by the court).
89. Id. at 87-88.
"should not be penalized now when it may wish to revoke such permission with respect to [neighboring landowners]."\(^90\)

To understand the court's analysis it is necessary to understand how the two tests, "clear and unequivocal" and "mere acquiescence," function with regard to commercial and non-commercial properties. Commercial and non-commercial property owners interact very differently with the public.

Commercial owners depend on the public's use of their property for their very existence. Consequently, they will not only acquiesce in the public's use, they will actively encourage such use. This is especially true in a shopping center complex which exists primarily to increase the number of potential customers in the area. Although the Bank is not part of the Center, it adjoins the Center and allows the public to cut through its property in an attempt to generate new business.\(^91\) The Security Federal court acknowledged that such action by the landowner is more in the form of a license; it does not indicate an intent to dedicate.\(^92\) If allowing the public to use a business' property were enough to establish a dedication, most businesses in the United States would be subject to common-law dedication. This would be contrary to the fundamental principles of private ownership. Furthermore, because there is no compensation mechanism in common-law dedication, use of this doctrine to acquire land for public use may violate the taking clause of the fifth amendment.\(^93\) Thus, the "mere acquiescence" test is not appropriate for commercial property.

In contrast, the "clear and unequivocal" test is the more sensible test in the commercial context. This test recognizes that commercial property owners encourage the public to use their property, yet rarely intend to dedicate the property to the public.\(^94\) Because the

\(^90\) Id. at 88. But see Skjeggerud v. Minneapolis & St. Louis Ry., 38 Minn. 56, 61, 35 N.W. 572, 574 (1887) (holding that the establishment of a right-of-way to accommodate a landowner's own business did not preclude the finding of an intent to dedicate, "for often the land-owner's own convenience is an important consideration in causing him to make a dedication").

\(^91\) Security Fed., 448 N.W.2d at 88.

\(^92\) Id. at 87–88.

\(^93\) See infra note 108.

\(^94\) Many states have held that intent to dedicate cannot be inferred where commercial property owners have simply invited the public onto their property in hopes of deriving economic benefit; the property owners have merely extended permission to the public to use the property. See, e.g., Lloyd Corp. v. Tanner, 407 U.S. 551, 569 (1972) (Property does not "lose its private character merely because the public is generally invited to use it for designated purposes."); Thrash v. Wood, 215 Ga. 609, 613–14, 112 S.E.2d 578, 581 (1960) (Permissive use of private property for customer parking does not result in an easement.); Blank v. Park Lane Center, Inc., 209 Md. 568, 576, 121 A.2d 846, 848–49 (1956) (Public use of private property is not sufficient to raise presumption of dedication.); Skjeggerud, 38 Minn. at 60, 35 N.W. at 574
“clear and unequivocal” test demands a higher threshold for determining intent, the commercial property owners’ property rights are better protected.

Increasing reliance on the “clear and unequivocal” test in future cases will result in closer scrutiny of the owners’ actual intent regarding their property, and ultimately in fewer declarations of common-law dedications to the public. Thus, property will be dedicated to the public only when the owner clearly intends the dedication.

The “mere acquiescence” test applies only to implied dedication. Owners who acquiesce to the public’s use of their property may be deemed to have impliedly dedicated the property. In contrast, the “clear and unequivocal” test applies both to express and implied dedication. Most cases of common-law dedication involve implied dedication because an express dedication is far less likely to be disputed.95

The assumptions about society upon which the doctrine of common-law dedication were based have changed dramatically since the 1700s. In modern America, there are methods of allowing public access to private property that are preferable to implied dedication. In the absence of a clear intention, evidenced by either an express agreement or “clear and unequivocal” acts that conclusively demonstrate an owner’s intent to dedicate property to the public, a dedication should not be found.

The use of the “mere acquiescence” test to imply a dedication is unfair for several reasons. First, the unintended dedication of an easement will interfere with a landowner’s ability to develop his or her property. Normally, the owner of a servient estate96 is precluded from using the property in a manner inconsistent with the uses and purposes of the easement.97

Second, the use of “mere acquiescence” in an implied dedication outside of the statutorily authorized private condemnation proceeding is unfair because it amounts to a taking for the benefit of a private party.98 Private condemnation is an action where the private

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95. For an example of express dedication, see Bartlett v. Stalker Lake Sportsmen’s Club, 283 Minn. 393, 395, 397, 168 N.W.2d 356, 357, 359 (1969) (finding that a document that “purported to grant to the public the perpetual right to hunt” on the land constituted a “clear expression of an intent to dedicate”).

96. A “servient estate” is an estate which is “burdened with a servitude. . . . [A] parcel of land subject to an easement for the benefit of another parcel.” BLACK’S LAW DICTIONARY 1369–70 (6th ed. 1990).

97. See supra note 39.

98. Implied dedication lacks the administrative controls which ensure efficient and just use of the power of eminent domain. The legislature exercises the power of eminent domain, while implied dedication is controlled by the courts. See Comment,
property rights of one landowner are taken for the benefit of another landowner. A private condemnation requires payment of just compensation to the condemnee. In contrast, payment to the landowner is not required in a dedication action.

Third and most importantly, the use of "mere acquiescence" in implied dedication is unfair because it is inconsistent with landowners' expectations in the ownership of their property. Protection of private landowners' justifiable expectations with respect to their property is an "abiding concept in Anglo-American property law." The notion of fee simple ownership carries with it the idea that the owner may exclude all others from his property, shall have the quiet enjoyment of it, and shall be free from unrecorded conflicting interest in it. Both the United States and Minnesota Constitutions protect these fundamental property rights from public appropriation and regulation.

Public or Private Ownership of Beaches: An Alternative to Implied Dedication, 18 UCLA L. REV. 795, 804 (1971). The practical effect of an implied dedication is to transfer the decision from the legislature to the courts. This raises "serious constitutional questions with respect to the separation of powers." In re Opinion of the Justices, 365 Mass. 681, 691, 313 N.E.2d 561, 569 (1974).

99. See, e.g., ARIZ. REV. STAT. ANN. § 12-1202 (1982); COLO. REV. STAT. § 38-1-102(3) (1990); OKLA. STAT. ANN. tit. 27, § 6 (West 1976); WASH. REV. CODE ANN. § 8.24.010 (1961); WYO. STAT. § 1-26-815 (1988). These statutes are intended to give a way of necessity to a landlocked owner, and have been narrowly construed. In Brown v. McAnally, 97 Wash. 2d 360, 644 P.2d 1153 (1982), the court strictly limited the scope of the condemnation to necessary ingress and egress:

[T]he statute which gives a landlocked owner a way of necessity over lands of a stranger is not favored in law and thus must be construed strictly. . . . There is, after all, a constitutional right to the protection of one's property that must not be lightly regarded or swept away merely to serve the convenience or advantage of a stranger to the property.

Id. at 370, 644 P.2d at 1160.

100. Without a clear and unequivocal manifestation of a landowner's intent to dedicate, implied dedication has the same practical effect as an eminent domain proceeding. Where governmental action results in a "permanent physical occupation" of property, the Supreme Court "uniformly [has] found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner." Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 434-35 (1982).

The same type of physical invasion occurs when an easement in favor of the public is granted over private property through common-law dedication. A common-law dedication, however, does not require the payment of just compensation to the landowner. The "strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1922).

101. Livingston, supra note 41, at 698.

102. Id.

103. See U.S. CONST. amend. V ("nor shall private property be taken for public use without just compensation"); id. amend. XIV, § 1 ("nor shall any State deprive any person of life, liberty, or property without due process of law"); MINN. CONST. art. I, § 13 ("Private property shall not be taken . . . for public use without just compensa-
Intent inferred from acts and conduct, particularly from long acquiescence, is a fiction. A finding of an implied dedication rests on presumptions that the landowner knows of the public use, acquiesced in it, and that such acquiescence is an intent to dedicate land to the public.\textsuperscript{104} While courts have compared dedication to the making of a contract,\textsuperscript{105} the giving of a gift is a more appropriate analogy, particularly since dedication requires no consideration. If landowners were aware that by acquiescing to public use they might be giving a gift to the public, they may attempt to prevent public access completely.\textsuperscript{106}

In some cases, landowners have either acquiesced in allowing public use over a period of time\textsuperscript{107} or made ineffective attempts to oppose it.\textsuperscript{108} The landowner who grants a right-of-way to others out of generosity or neighborliness does not necessarily expect that the permitted users will acquire any property rights against the landowner.\textsuperscript{109}

Finally, implied dedication is inappropriate in a modern urban setting. During the rapid industrialization and urbanization of the nineteenth century, implied dedication reflected the needs of a developing society.\textsuperscript{110} Establishing transportation routes was vital in expanding the frontier. Transportation played a primary role in

\textsuperscript{104} Berger, \textit{Nice Guys Finish Last—At Least They Lose Their Property: Gion v. City of Santa Cruz}, 8 CAL. W.L. REV. 75, 79–80 (1971). \textquoteleft\textquoteleft[T]he stark reality of [implied dedication] cases is that private property was confiscated on the strength of presumptions.\textquoteright\textquoteright \textit{Id.} at 79.

\textsuperscript{105} \textit{See supra} text accompanying note 32.

\textsuperscript{106} In Gion v. City of Santa Cruz, 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970), the court held that an implied dedication of beaches resulted where the public used the landowners’ beach property for over five years with full knowledge of the respective owners. \textit{Id.} at 43, 465 P.2d at 59, 84 Cal. Rptr. at 171. As a result of the court’s decision, many property owners installed barbed wire fences and hired guards in an attempt to show lack of dedicatory intent. This result was contrary to the court’s desire to open more beaches to public use. \textit{Comment, This Land is My Land: The Doctrine of Implied Dedication and Its Application to California Beaches, 44 S. CAL. L. REV.} 1092, 1094–95 (1971).

\textsuperscript{107} \textit{See supra} note 28.

\textsuperscript{108} In Gion, one landowner posted signs stating that the property was privately owned. These signs were either blown away or torn down and the landowner never told anyone to leave the property. \textit{Gion,} 2 Cal. 3d at 54, 465 P.2d at 53, 84 Cal. Rptr. at 165. Other landowners blocked the entrance to their property with a large timber. This log was removed within two hours by beachgoers. \textit{Id.} at 57, 465 P.2d at 55, 84 Cal. Rptr. at 167.

\textsuperscript{109} In Gion, the court refused to “presume that owners of property today knowingly permit the general public to use their lands and grant a license to the public to do so.” \textit{Id.} at 41, 465 P.2d at 57, 84 Cal. Rptr. at 169.

Public policy favored promoting transportation to further economic growth, local development, and job creation. The policies motivating the use of implied dedication in the nineteenth century roadway cases are no longer valid.\textsuperscript{112}

In modern society, more appropriate mechanisms exist for the public acquisition of land. The development of statutory schemes of recording and platting have resulted in the creation of formal methods of effecting dedication.\textsuperscript{113} Private parties, particularly commercial entities dealing with one another at arms-length, can negotiate for access rights. Governmental acquisition can be accomplished through the exercise of the power of eminent domain.\textsuperscript{114}

**CONCLUSION**

The Minnesota courts have not yet articulated their method for balancing the parties’ interests or their reasoning for choosing either the “clear and unequivocal” test or the “mere acquiescence” test in implied dedication cases. The court in *Security Federal* fell short of this goal and reasoning.

To best protect landowners’ expectations in the private ownership of their property, especially commercial property, courts should refrain from using the “mere acquiescence” test. The “clear and unequivocal” test is a fairer and more appropriate means in modern society of determining an owner’s intent to dedicate.

*Sheryl Strauss and Emily Wallace-Jackson*

\textsuperscript{111} Until the invention of the telegraph, all forms of communication required travel by a message courier. *See Introduction to Current Issues in Transportation Policy* at ix (A. Altshuler ed. 1979).

\textsuperscript{112} Professor Roberts suggests that, although implied dedication was instrumental in creating many public roads, it may not have been efficient in terms of the long-term upkeep and utilization of the road resource.

\textsuperscript{113} See supra note 20.

\textsuperscript{114} An eminent domain proceeding avoids the question of whether a taking of private property has occurred because it provides for just compensation. *See supra* note 100.
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