

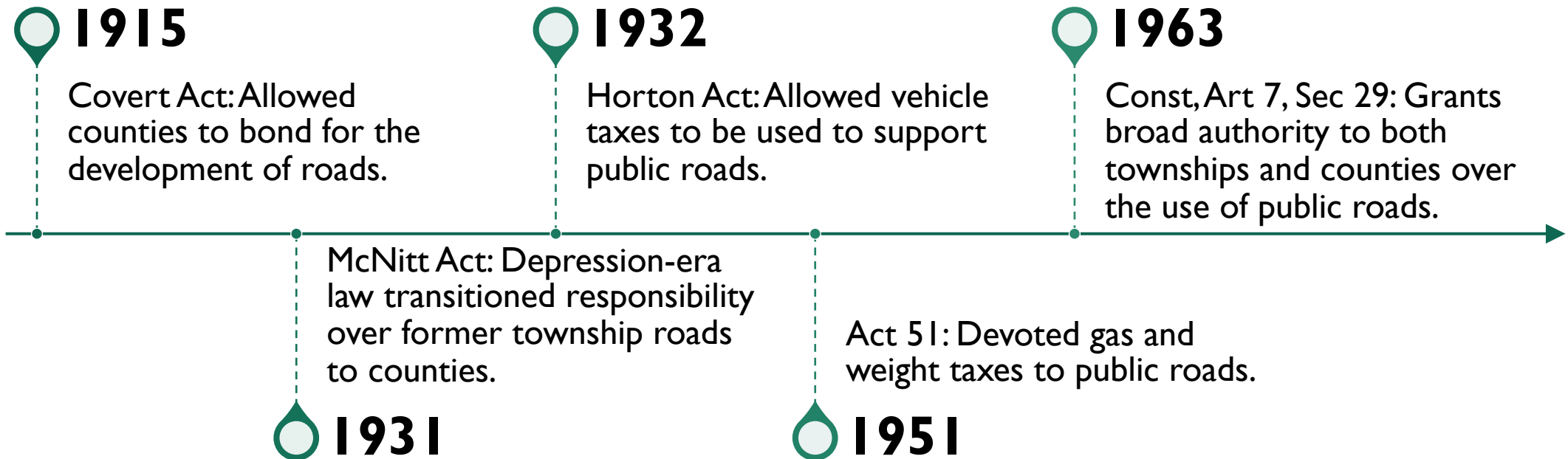
**Fahey Schultz
Burzych Rhodes**

EXPERT COUNSEL  REAL SOLUTIONS

Common Public Road Issues

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Historical Development of Shared Road Jurisdiction





Roadmap

- What is a public road?
- How is one created?
- How can you fund road improvements?
- What is a paper road, and what can be done about that?
- What authority do we have over roads?
Are there exceptions to that authority?

Road Basics

- Roadway: “That portion of a highway improved, designed, or ordinarily used for vehicular travel.” MCL 257.55.
- Townships have constitutional control over utilities’ use of road rights-of-way. Const. Art 7 § 29
- Roads are 66 feet wide, or 33 feet on either side of a centerline. *Eyde Bros Development Co v Eaton County Drain Com’r*, 427 Mich 271 (1986).
- Right-of-way is commonly used to construct or maintain utilities, or to support code enforcement activities.



Declaration/Condemnation

Platting

Public Dedication

By User (MCL 221.20)

Creating a
Road

Declaration/Condemnation

- Roads can be created through declaration or condemnation.
- MCL 221.20a allows township to petition the circuit court to declare a road to be a public highway, and to determine its length and boundaries.
 - Requires petition of 51% of property owners with frontage on the road
 - Requires road commission's written consent
- If unsuccessful, Township can acquire by condemnation of any owners with frontage who claim the road is not a public highway.
- If condemnation completed, the court is required to order the road be considered a public highway, and determine its length and boundaries.



Platting

- The Land Division Act, MCL 560.101 *et seq.*, provides for the creation of plats.
- Final plats must include any public or private roads, streets, alleys, or other public areas. MCL 560.137.
 - Streets and Roads must be described by their bearing, width, and names.
 - Streets, roads, and alleys not dedicated to public use need to be marked as private.
 - Curved roads, streets, or alleys have to include data relating to the curves, and must be shown on a chart or table.



Public Dedication

Appropriation of land to public use by its owner, which is then accepted for that use by or on behalf of the public.

Process

Owner of land offers dedication to the County
County accepts the dedication through either:

- An express declaration OR
- Acts indicating acceptance

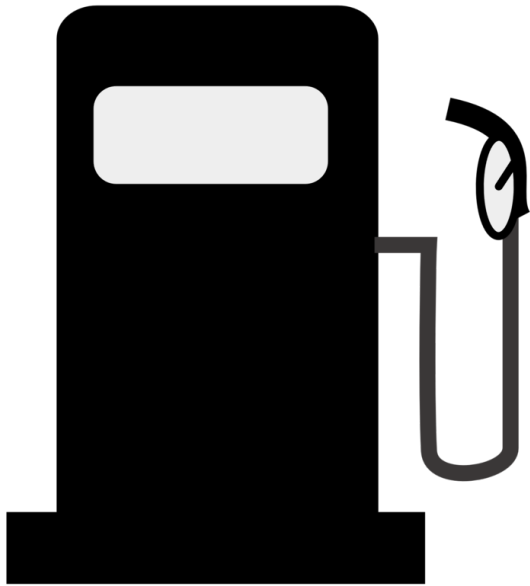
Person dedicating the road can limit the dedication. The dedication is presumed to be 66 feet wide, but the dedication may state otherwise.

Creation by User

- Roads can be created by public use. MCL 221.20.
- Requirements:
 - ✓ Property used as road by public for 10 years or more; or
 - ✓ Property used as a road by public for 8 years on an unrecorded, but platted road.
 - ✓ Public's use is open, notorious, and exclusive.
 - ✓ Road must have a defined line
 - ✓ Public authorities accepts the roads through its acts (such as maintaining the road as though it were any other public road).
- Leads to automatic creation of road that is 66 feet wide.



State Road Funding

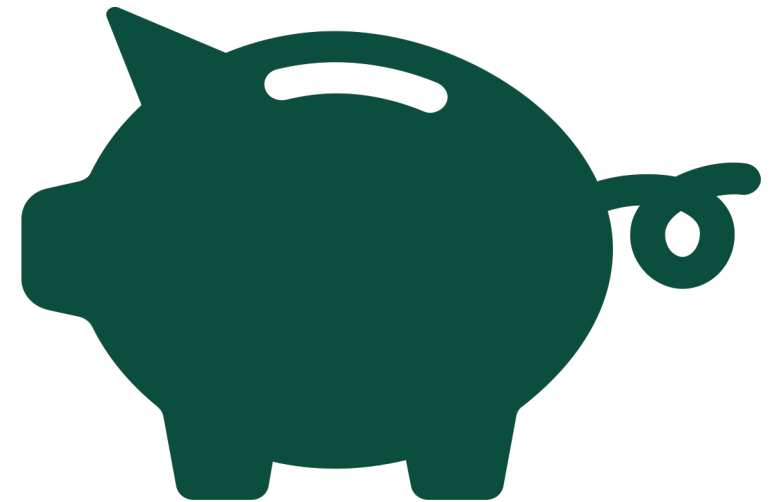


- County Road Commissions do not have taxing authority
- Gas Tax
 - Fixed amount: \$0.263 per gallon
 - Electric vehicles contribute less per mile.
 - MPG improvements reduce relative contribution to road costs.
 - Funds are shared with MDOT, counties, cities, and villages.
- Act 51 Funds are distributed based on:
 - Population
 - Road Mileage (with credit for urban road mileage)
 - Snowfall



County Road Involvement

- County cannot spend Michigan Transportation Funds for construction on county local roads without matching funds from another source.
 - Townships
 - County Taxes
 - County Commissioner Appropriations
- County cannot mandate townships to fund road improvements.
- But practically, township failure to fund roads can result in the county allocating its limited funds elsewhere in the county.



Road Funding: Options

- Townships can assist in the funding of road improvements and maintenance.
 - Appropriations from general fund
 - Voted road millage
 - Road bonds
 - Special assessments
 - Township-wide
 - Specific areas
- MCL 247.670a allows Township with a population of 15,000 to assume jurisdiction to improve and maintain county local roads by a year-to-year contract with County Road Commission.
- Bloomfield Township (Oakland County) is a unique case.



Road Liability Issues



Roadways

County Road Commission is liable for defects in highways.



Sidewalks

Liability for defects in sidewalks lies with the Township (but note 2" rule presumption).



Roads created by platting under the Land Division Act, but never constructed or used.

Common issue for townships that are vacation destinations, particularly those with substantial waterfronts.

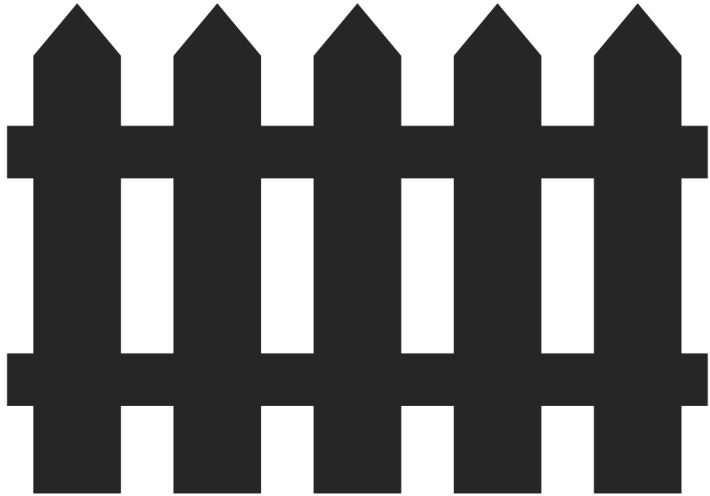
What's a
Paper Road?

What Can We Do About Paper Roads?

- The Land Division Act provides a process for vacating paper roads.
 - Complaint in circuit court
 - Serve property owners within 300 feet and various public agencies.
 - Court has authority to vacate the paper road; property vests in adjoining properties



Vacating a Road by Abandonment



- Roads can also be deemed “abandoned.” Not just a matter of showing the road isn’t being used. Requires proof of:
 - An intent to relinquish the road; and
 - Specific acts putting that intention into effect.
- What acts can show abandonment?
 - Decertification by the Road Commission
 - Fencing of the road by private parties
 - Signage restricting use of the road to certain parties
 - Lack of use
 - Lack of public maintenance.

If vacated road borders a lake or stream, and would result in the loss of public access, Township may retain the property as an ingress and egress point.



Township has first priority to obtain and control the property.



Township must maintain the public access to avoid litter, unsanitary conditions, undue noise, and congestion. Repeated failure to do so can lead to the road being closed



If property is retained, DNR has a right of first refusal with respect to any transfer.

Riparian Issues

Regulation of the Use of Roads

- Truck route ordinances.
- Air brake ordinances.
- Billboard/sign ordinances.



Access by Utilities

- Townships have constitutional control of the public right-of-way. Const. Art 7 § 29
- But there are limits!
- General Rule: Utilities must obtain a township's consent (franchise), but that consent cannot be unreasonably withheld.
- Statutory Limits on the General Rule:
 - METRO Act: MCL 247.183
 - Uniform Video Services and Local Franchise Act: MCL 484.3301 *et seq.*
 - Small Cell Facilities Deployment Act



METRO Act

Applies to telephone and Internet providers.

Process is established by Act, but enforced by the Michigan Public Service Commission (MPSC).

Requires a unilateral or bilateral permit to operate in right of way.

Permits are prepared by the MPSC; deviation requires either agreement, or mediation through the MPSC.

Fees are fixed at \$500.00 by statute. MCL 484.3106.

Applications must be approved or denied within 45 days. MCL 484.3115.



Uniform Video Services and Local Franchise Act

- Establishes a uniform franchise for use by cable television providers; governed by the MPSC.
- Notice of an incomplete application must be provided within 15 days.
- A complete application must be approved within 30 days.
- Franchise lasts for 10 years, may be renewed.
- Fees are fixed at 5% of gross revenues by statute with an addition 2% for PEG fees.
- Can require a permit fee not exceeding actual, direct costs.
- No authority to deviate from uniform franchise terms unless provider voluntarily agrees.
- Right-of-way access must be open, comparable, nondiscriminatory, and competitively neutral between providers.



Small Cell Facilities Deployment Act

- Enacted into law at end of 2018.
- Allows installation of small cell and micro wireless systems in public rights-of-way.
- “Small cell” facility
 - Each antenna may not exceed six cubic feet.
 - Related wireless equipment shall not exceed 25 cubic feet.
- “Micro” wireless facility
 - 15 inches wide, 12 inches high, and 11 inches long.
 - Exempt from any approval or permit fees or rates.
- Antennas are allowed on all types of utility poles.
- Complicated approval timelines.





What Does the Future Look Like?

1. Deployment of 5G cell service by cell providers.
2. Wireless facilities to support autonomous vehicles.
3. Technology to promote greater traffic safety.



Questions

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