
Coates' Canons Blog: Can We Close That Old Street Right-of-Way?

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Decades ago, a landowner recorded a plat to divide his tract of land into lots and streets. The lots were sold and developed with houses. Most of the streets were constructed and opened as public streets. But there is an undersized and un-used alley running behind a block of houses. And, across the side of one large lot, there is a portion of street right-of-way that was never constructed and is not needed for access. Can the town close these old rights-of-way? Can the property owners?

This blog explores the rights and procedures involved in closing easements and rights-of-way.

Municipal Procedure

Under G.S. 160A-299, a municipality may permanently close a street or public alley within the municipal limits or extraterritorial jurisdiction. This applies to streets and alleys that have been opened and maintained as public, as well as property that was offered for dedication to the public by plat but never accepted or maintained by the municipality (provided that dedicator rights to withdraw a dedication under G.S. 136-96 are preserved).

First, the council must adopt a resolution declaring its intent to close the public way and calling a public hearing on the proposed closing. Proper notice must include:

- Publication of the resolution once a week for four successive weeks prior to the hearing;
- Registered or certified mail notice to owners of property adjoining the public way;
- Posted notice of the proposed closing in at least two places along the public way; and
- If the right-of-way is under the control of the NC Department of Transportation (NCDOT), mailed notice to NCDOT.

Any person may speak at the public hearing concerning whether closing the street or alley is detrimental to the public interest. Council may adopt an order closing the street or alley if council is satisfied “that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property.” For NCDOT-controlled streets or alleys, NCDOT must consent to the closing.

The city may reserve rights for utility easements and improvements within the closed street or alley for itself or for private utilities that have a utility agreement or franchise with the city at the time of the street closing.

The order closing the street or alley must be recorded with the register of deeds. Upon closing, the right-of-way is presumed to vest in the adjoining property owners, each taking property from the centerline to their respective boundary. If the owners want to divide the right-of-way differently, the recorded plat must show that they all agree to that division. In some cases, the vesting of former right-of-way may add significant area to adjoining lots and may increase the density or scope of development for that property.

Any person aggrieved by the street closing has 30 days to appeal. “Person aggrieved” is not defined for the road closure statute, but the court of appeals has used the standard from zoning board of adjustment cases as a guide for street closure standing. For those zoning appeals, an “aggrieved party” is “one who can either show an interest in the property affected, or if the party is a nearby property owner, some special damage, distinct from the rest of the community, amounting to a reduction in the value of his property.” Under this interpretation, the fact that someone is a taxpayer in town does not qualify that person as an aggrieved party. Moreover, owning property three blocks away is insufficient for

standing to appeal a road closure. *Cox v. Town of Oriental*, 759 S.E.2d 388 (N.C. Ct. App. 2014).

County Procedure

Under G.S. 153A-241, counties have authority similar to municipalities, but the county authority is limited in scope. A county may permanently close any public road or easement within the county jurisdiction, except those within a municipality or under the control and supervision of NCDOT. So what does that leave for the county? This provision appears to allow for counties to close paper streets—those streets shown on a plat as public but never constructed and opened. Additionally, these provisions may authorize the county to close streets in a town's extraterritorial jurisdiction that have been accepted and maintained by the town under G.S. 160A-374. In this situation, the city and county authority for street closure overlaps.

The county authority to close streets also is limited in applicability. Municipal authority extends to any street offered for dedication to the public, even if it has not been accepted by the public. County authority, in contrast, only allows for closing rights-of-way and easements that have been accepted by the public.

Similar to the municipal process for closing streets and alleys, the county commission must “first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question.” Notice of the intent and public hearing must include:

- Published notice once a week for three successive weeks;
- Registered or certified mail notice to owners of property adjoining the public road or easement who did not request the closure; and
- Posted notice of the proposed closing in at least two places along the public way.

The hearing procedures and standards outlined at G.S. 153A-241 are comparable to those required for municipalities. Upon closing, the right-of-way or easement vests in the adjoining property owners, each taking property from the centerline to their respective boundary. Such a property interest, however, “remains subject to any public utility use or facility located on, over, or under the road or easement” until the landowner pays the utility the reasonable costs of removal and relocation.

Private Withdrawal

Under certain circumstances a dedication that has not been opened and used may be withdrawn by private parties.

If property dedicated for a street is not actually opened and used by the public within 15 years of dedication, the dedication is presumed abandoned and certain property owners may withdraw the dedication. G.S. 136-96. The dedicator or an individual claiming rights under the dedicator must record with the register of deeds a declaration withdrawing the dedicated property. There are limitations, however. Where dedicated property is necessary “to afford convenient ingress or egress to any lot or parcel of land sold and convey by the dedicator,” the dedication may not be abandoned and withdrawn. Additionally, property dedicated to be part of a future street shown on an adopted street plan pursuant to G.S. 136-66.2 may not be abandoned and withdrawn.

The right to withdraw is not enjoyed generally by lot purchasers. The statute authorizes withdrawal by “the dedicator or some one or more of those claiming under him.” Those claiming rights under the dedicator will depend upon the rights conveyed to lot purchasers and the organizational structure of the developer and/or homeowners association. In one case, the court of appeals found that because the dedicator was an individual and retained fee interest in the streets, the individual lot owners only had an easement and could not withdraw the dedication of the underlying fee interest. *Town of Atl. Beach v. Tradewinds Campground, Inc.*, 97 N.C. App. 655, 389 S.E.2d 276 (1990). By contrast, if the dedicator had been a corporation that became defunct, then the lot owners may have had more rights under G.S. 136.96.

If a dedicator or successor withdraws a dedication of property, a municipality may preserve public and private utility easements. G.S. 160A-299(g). Prior to recording of a map, plat, or declaration of withdrawal, the city must hold a public hearing and declare its intent to retain the easements. The city must provide certified or registered mail notice to the withdrawing party at least five days prior to a public hearing. After the public hearing, city council must “approve a ‘declaration of retention of utility easements’ specifically describing such easements.” The declaration of retention, then,

must be recorded with the withdrawal and shown on any map or plat of withdrawal.

Private Rights

It is worth noting that even if a public right-of-way is closed or withdrawn, private rights for the use of that property may still apply. In *Stephens v. Dortch*, for example, a property owner sought to withdraw dedication of a certain segment of street from an old subdivision. Neighbors objected. The court upheld the withdrawal of dedication, as the area was never accepted by a government entity for maintenance nor used by the general public, but the court also found that neighbors had an easement appurtenant (and more rights than the general public). 148 N.C. App. 509, 510, 558 S.E.2d 889, 890 (2002).

Conclusion

So, a town may permanently close streets and alleys—even if they were not opened or formally accepted. Counties have similar authority, but the scope of that authority is limited. And, certain subdividers of land and other dedicators have certain rights to withdraw a street dedication if the street was not opened and used within 15 years of its dedication.

Going back to the example from the start, can the town or owners close the rights-of-way? First, consider the alley running behind the houses. Apparently it was opened and used by the public at some point, so private withdrawal is not available. However, the owners may request that the town close the alley. If the town followed the proper procedure and made the requisite findings under G.S. 160A-299, it could close the alley, if it desired. What about the un-opened street? The property owner possibly may seek withdrawal, but it will depend on the rights of that owner under the original dedicator. Alternatively, the town could initiate a closure under G.S. 160A-299. Again, if the town followed the proper procedure and made the requisite findings, it could formally close the unopened street.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-299
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=136-96
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-241
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-374
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=136-66.2