

D-0130 - Dedication from Lawrence,  
Inc. for Magill Lane between Armour  
& drainage, Lot 3, Blk 4 & Lot 1,  
Blk 5, Pine Valley 3rd Addition

COMMIT  
M.A.P.C.  
B.C.C./E

POSTED  
7-1-59

### ACTION

COMMITTEE	<u>Notary Public</u>	<sup>DATE</sup> <u>7-9-59</u>
M.A.P.C.	<u>W/D</u>	<u>8-20-59</u> <u>7-16-59</u>
B.C.C./B. CO. C.	<u>8-20</u>	<u>          </u>

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N244-19-27-2E  
E-9 2-15-62

VACATION OR DEDICATION  
CHECK LIST

CASE NO. D-0130 RECEIVED 6-29-59 BY LPE

S/D ACTION 7-9-59 MAP NO. \_\_\_\_\_

MAPC ACTION \_\_\_\_\_

BCC ACTION \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_ CONSIDERED BY BCC \_\_\_\_\_ PUBLISHED \_\_\_\_\_

**THE CITY OF WICHITA**

**OFFICE OF** Assistant City Attorney **DATE** June 15, 1959

**TO** Island R. Edmonds, Senior Planner  
**FROM** Lawrence Curfman

**SUBJECT** Status of Land in Third Addition  
to Pine Valley Estates

Your memorandum of June 3, subject substantially as above, to Mr. Wood, has been referred to the writer by Mr. Aley with the request that I answer your inquiries.

Your questions all concern an area in the subject addition 60 feet by 150 feet, marked on the plat "dedicated for public and utility use" which area lies between Lot Three (3), Block Four (4) and Lot One (1), Block Five (5).

I shall attempt to answer the five questions posed in your letter. but at the outset it should be pointed out that the matter is not exclusively a legal one - - it involves engineering and practical considerations. Furthermore, the decision is not solely for the city but the desires and wishes of the developer and the owners of the two abutting lots should be known. With these preliminary comments before you, I shall attempt to answer your questions:

1. "As this strip of land has been dedicated by this plat, is it implied that the land can be used for street purposes?"

Attention is first invited to the language of the dedication as shown on the recorded plat. It is brief and is quoted in full "Easements are hereby granted as indicated for the construction and maintenance of all public utilities. The boulevard, street, and lanes are hereby dedicated to and for the use of the public. Easements are hereby granted for drainage as indicated. The drainage dedication as indicated on this plat is hereby dedicated to and for the use of the public." The area in question is not specifically referred to as designated a street. It is not designated an easement. As to whether it was intended as a street, it seems to the writer to be somewhat significant that lines on the plat connect the southwest corner of Lot Three (3), and the northwest corner of Lot One (1) as well as the southeast corner of Lot Three (3) and the northeast corner of Lot One (1). The absence of such lines would be persuasive that it was intended that this be a part of a street. Their presence, it seems to me, indicates an intention that it not be a part of a street.



The applicable statute (or at least one of them) G. S. 1949, 12-401 contains the following language:

"The plat shall accurately and particularly set forth and describe: First, all the parcels of ground within such city or town or addition reserved for public purposes, by their boundaries, course and extent whether they be intended for avenues, streets, lanes, alleys, commons, parks or other uses; \* \* \*"

The other statute applicable to the platting of additions in the City of Wichita is G. S. 1949, 13-1413, which, among other things, contains this language:

"\* \* \* No reservation shall be made in the dedication of the streets, alleys or public grounds by said grantor in the streets, alleys or public grounds for any purpose whatsoever."

The writer has conducted some research into the case law of the country and am unable to find anything which would definitely answer the question one way or the other. A few general rules may, however, be stated.

No particular form of dedication is necessary. However, the acceptance and assent of the municipality to the proposed or offered dedication is required. Generally speaking, there must either be a formal act of acceptance by the municipality or some clear and definite public user. Also, custom and usage in the particular area is recognized by the courts. The foregoing general principals appear from Chapter 18 of Municipal Law by Rhyne.

It would be the writer's opinion that the presence on the plat of the lines between the lot corners above referred to and the language on the plat above referred to, indicate an intention of both the developer and the city, was that this not be a public street and that the land cannot be used for street purposes without some other or further act of dedication on the part of the owner.

2. "If the land cannot be used for street purposes, is it to be assumed to be primarily for drainage purposes leading into the drainage dedication at the rear of Blocks 4 and 5?"

It seems to me the answer to this question is a more or less unequivocal yes. Eliminating for the moment the word utility, the words read "dedicated for public use". Since there is no limitation on the public use, it would appear to permit underground storm sewers, underground sanitary sewers, an open storm water drainage ditch and other public uses short of street purposes.

3. "In either event, is it possible for this strip of land to become an improved area by its being black topped, paved or otherwise treated to stop the present erosion and generally unsightly condition?"

The answer to this question is clearly "yes". G. S. 1957, 12-6a01-et seq was, in the writer's opinion, designed for just such situations which do not seem to fit clearly into other statutory categories. A benefit district can be set up including possibly all of Third Addition to Pine Valley Estates or possibly a more limited area and any part of the costs from 100% to 20% charged to such benefit district. The improvements could consist in part of shaping a channel, paving & black topping such channel, planting grass, trees, shrubs and sodding, fertilizing and making similar improvements.

4. "If it is determined that the area as presently dedicated does not imply permission to use it as a street, what procedure might be followed to change the dedication from that indicated on the plat to a dedication as a street and an extension of McGill Lane."

In the writer's opinion, the only step required would be a written dedication on forms previously prepared by the Department of Law, executed by the owner, accepted by the city and filed of record with the Register of Deeds.

5. "If the area is to become dedicated as a street by some method, does that necessarily imply that the city would be responsible for the construction of any bridge across the drainage dedication which might become necessary in the future?"

This question can be answered with an unqualified no. Political pressure may arise in the future for the city at large to construct such a bridge but ample means exist for the construction of a bridge on a benefit district basis using the same statute referred to in answer to the question 3, that is G. S. 1957 Supp. 12-6a01-et seq. If the bridge is to serve the Third Addition to Pine Valley Estates and the area to the east, such area should be designated as a benefit district and all or a large part of the cost of the bridge paid by such benefit district.

Respectfully submitted,

Lawrence E. Curfman  
Assistant City Attorney

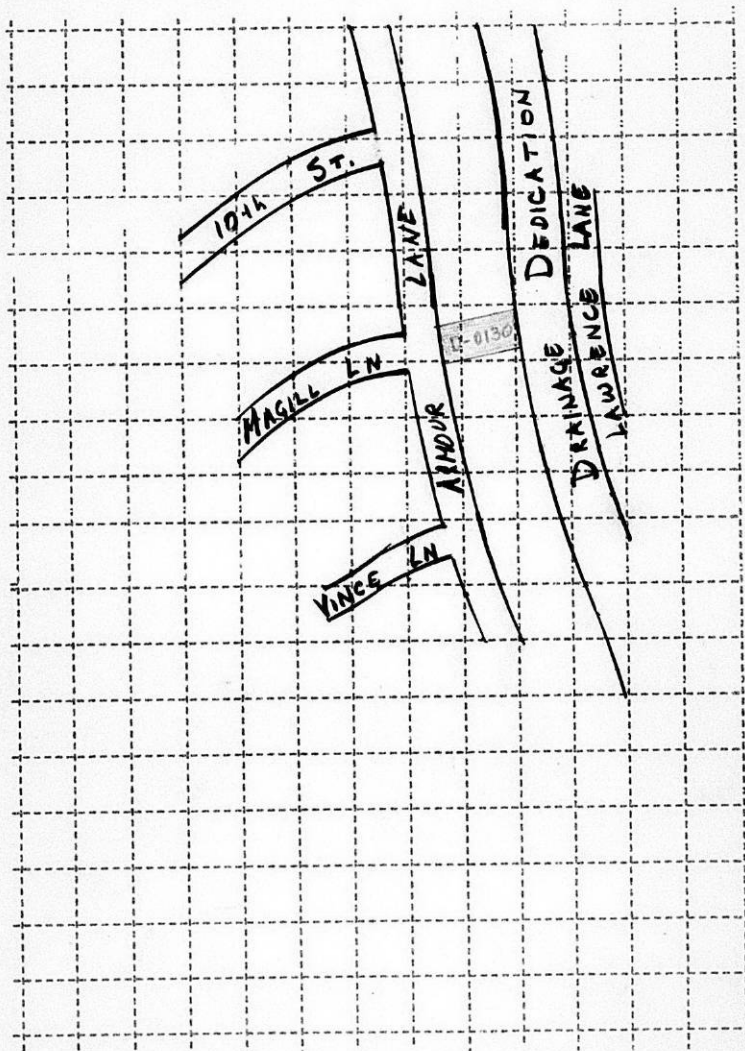
LEC/mb

cc: Fred W. Aley

Thomas A. Wood

Case Number D-0130 Map Number E-9 Change requested \_\_\_\_\_

Meeting Date 7-9-59 Date Pictures taken \_\_\_\_\_ Planner \_\_\_\_\_



WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION

CITY BUILDING ANNEX 104 S. MAIN STREET WICHITA 2, KANSAS

July 20, 1959

Board of City Commissioners  
City Building  
Wichita, Kansas

Gentlemen:

Re: D-0130 - Dedication for  
McGill Lane from Armour Lane  
to the west line of the  
drainage dedication in Pine  
Valley Estates

At the regular meeting of the Metropolitan Area Planning Commission held on July 16, 1959, the above dedication, legally described as that part of the Third Addition to Pine Valley Estates as shown on the plat dedicated for public and utility use bounded on the west by Armour Lane, bounded on the east by drainage dedication, bounded on the north by Lot 3, Block 4, bounded on the south by Lot 1, Block 5, all in the Third Addition to Pine Valley Estates, was considered and the following action taken:

It was moved, seconded and carried unanimously that the Planning Commission recommend to the Board of City Commissioners that this dedication be denied.

Respectfully submitted,

L. L. Little  
Director of Planning

LLL:LRE:ber

WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION

CITY BUILDING ANNEX 104 S. MAIN STREET WICHITA 2, KANSAS

July 20, 1959

Board of City Commissioners  
City Building  
Wichita, Kansas

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It was moved, seconded and carried unanimously that the Planning Commission recommend to the Board of City Commissioners that this dedication be denied.

Respectfully submitted,

L. L. Little  
Director of Planning

LLL:LRE:ber

July 20, 1959

Board of City Commissioners  
City Building  
Wichita, Kansas

Gentlemen:

Re: D-0130 - Dedication for  
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It was moved, seconded and carried unanimously that the Planning Commission recommend to the Board of City Commissioners that this dedication be denied.

Respectfully submitted,

L. L. Little  
Director of Planning

LLL:LRE:ber

July 13, 1959

Mr. Robert J. Lawrence, President  
Lawrence, Inc.  
6601 East 13th St., RFD 3  
Wichita, Kansas

Dear Mr. Lawrence:

SUBJECT: D-0130

This is to advise you that at its regular meeting of July 9, 1959, the Subdivision Committee of the Metropolitan Area Planning Commission considered subject proposal to dedicate land for street right-of-way in Pine Valley 3rd Addition. This proposal was to provide for an extension of McGill Lane from the east side of Armour Lane to the west side of the Drainage dedication in Pine Valley 3rd Addition. The Subdivision Committee has recommended that this dedication not be accepted.

The recommendation of the Subdivision Committee will be presented to the Planning Commission for its consideration on July 16, 1959. If you have any questions concerning this matter please do not hesitate to call on us.

Very truly yours,

Leland R. Edmonds  
Senior Planner

LRE:dw

July 17, 1959

Mr. Robert J. Lawrence, Pres.  
Lawrence, Inc.  
6601 East 13th Street  
Wichita, Kansas

RE: V-0130

Dear Mr. Lawrence:

This is to advise you that at its regular meeting of July 16, 1959, the Metropolitan Area Planning Commission considered subject proposal to dedicate land for street right-of-way in Pine Valley Third Addition. This proposal was to provide for an extension of McGill Lane from the east side of Armour Lane to the west side of the drainage dedication in Pine Valley Third Addition. The Planning Commission has recommended that this dedication not be accepted.

The recommendation of the Planning Commission will now be forwarded to the Board of City Commissioners for its consideration on July 28, 1959. If you have any questions concerning this matter, please do not hesitate to call on us.

Very truly yours,

Leland R. Dimonds,  
Senior Planner

LRE:sdh

BCC  
8-18-59

August 12, 1959

Board of City Commissioners  
City Building  
Wichita, Kansas

Gentlemen:

Re: D-0130 - Dedication for  
Magill Lane between Armour  
Lane and Drainage channel  
to the east

At the regular meeting of the Metropolitan Area Planning Commission held on July 16, 1959, the above dedication was considered and the following action taken:

It was moved, seconded and carried unanimously that the Planning Commission recommend to the Board of City Commissioners that this dedication be denied.

Respectfully submitted,

L. L. Little  
Director of Planning

LLL:LRE:ber

D-120

METROPOLITAN PLANNING

August 26, 1959

Frank H. Backstrom, City Manager

L. L. Little, Director of Planning

Offer of dedication -  
McGill Lane between Armour  
Lane and Drainage Canal

I am herewith returning the material forwarded to this Department from the Board of City Commissioners.

The offer of dedication has been withdrawn by the proposed dedicators and the matter has now been resolved, according to our latest information, to the satisfaction of all concerned.

L. L. Little,  
Director of Planning

LLL:sdh

Enclosure