

## **The Invisible Public Road, Hiding In Plain Sight**

*by Steven J. Kahn*

Sometimes what you see is not exactly what you've got. Sometimes it's more! This is especially true when it comes to public rights of way dedicated to run through private property. In the recent case of *Coppinger v. Rawlins*, a California Court of Appeal ruled that when a public right of way is dedicated to a County by description on a parcel map, and that parcel map gets approved and accepted by the County, the public right of way becomes a public road even if the County ultimately refuses to build and maintain it.

*Coppinger* involved an access dispute between two neighbors over whether Coppinger's property was burdened by a public right of way shown on a parcel map. The road had been dedicated to Riverside County by Coppinger's predecessor and accepted by the County, but was never incorporated into the County's maintained road system.

Years later, Coppinger's neighbor, Rawlins, demanded access through Coppinger's property, claiming a right to use the public road shown on the parcel map. In response, Coppinger built a fence that blocked access. Needless to say, they ended up in court, with Coppinger arguing that the dedicated public right of way was unenforceable – and consequently of no benefit to Rawlins – because no road had been built by Riverside County and there had never been public use. Conversely, Rawlins and Riverside County argued that the County's acceptance of the right of way was absolute, regardless of whether or not a public road got built and became part of the county-maintained system.

The Court of Appeal reasoned that the dedication of a public right of way and acceptance of the dedication by Riverside County was sufficient to create a public road through Coppinger's property. Building a public street and adding the road to the county-maintained system was an additional, discretionary step requiring approval by the County's supervisors, but it was not essential to confirming the public right of way after it had been accepted from the dedication. Even though the County wanted nothing to do with the road, it was still a public, non-maintained road that Rawlins and others had the right to use.

*Coppinger* is a stern reminder that when considering whether to purchase property, one must carefully review both what's actually visible on the ground and what is shown on parcel maps, surveys, and other demonstratives. Simply relying on what you can see on the land is not enough – “but there's no road / pipe / structure out there” is not the end of the investigation into whether land is burdened by a right or encumbrance.

The lesson: We must dig deep (sometimes, literally) to assess whether an offer of dedication impacts a piece of property, and we cannot rely on just what we see, or do not see, on the ground. Due diligence is required to determine, among other things, whether an offer of dedication got accepted and then, the conditions of the acceptance. Go out and inspect the property, compare what you find with what the public records show, then consult with professionals about what it all means. ■



**Steven J. Kahn**

925.460.3362

[steven.kahn@hogequenton.com](mailto:steven.kahn@hogequenton.com)

.....

**The Fine Print.** This Update is provided as an educational service by Hoge Fenton for clients and friends of the firm. This communiqué is an overview only, and should not be construed as legal advice or advice to take any specific action.