PUBLIC vs. PRIVATE USE OF THE RIGHT-OF-WAY

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The following are quotes from various cases that address issues related to the interest in and rights regarding public right-of-ways. I have attempted to place the quotes under headings to help distinguish them by subject, but there is inevitably some crossover. Also, no attempt was made to identify the most current, relevant, or controlling decisions for each subject.

Who Owns What

The public easement in a public street is the public and common right to use the same for the passage of persons and things, and for purposes incidental thereto. The exercise of this right is subject, in some degree, to regulations to be made by the proper authorities.
Newell v. Minneapolis, L. & M. Ry. Co., 35 Minn. 112, 114, 27 N.W. 839, 840 (1886)

The private right in a street is of course subordinate to the public right. The latter right is for use as a public street, and the incidental right to put and keep it in condition for such use, and for no other purpose. Whatever limitation or abridgment of the advantages which the abutting lot is entitled to from the street, may be caused by the exercise of the public right, the owner of the lot must submit to. If putting it to proper street uses causes annoying noises to be made in front of his lot, or the air to be filled with dust and smoke, so as to darken his premises, or pollute the air that passes from the street upon them, he has no legal cause of complaint. His right to complain arises when such interruptions to the enjoyment of his private right are caused by a perversion of the street to uses for which it was not intended; by employing it for uses which the public right does not justify.
Adams v. Chicago, B. & N. R. Co., 39 Minn. 286, 294-95, 39 N.W. 629, 634 (1888)

The question, then, is, what is the nature and extent of the public easement in a highway? If there is any one fact established in the history of society and of the law itself, it is that the mode of exercising this easement is expansive, developing and growing as civilization advances. In the most primitive state of society the conception of a highway was merely a footpath; in a slightly more advanced state it included the idea of a way for pack animals; and, next, a way for vehicles drawn by animals,-constituting, respectively, the iter, the actus, and the via of the Romans. And thus the methods of using public highways expanded with the growth of civilization, until to-day our urban highways are devoted to a variety of uses not known in former times, and never dreamed of by the owners of the soil when the public easement was acquired. Hence it has become settled law that the easement is not limited to the particular methods of use in vogue when the easement was acquired, but includes all new and improved methods, the utility and general convenience of which may afterwards be discovered and developed in aid of the general purpose for which highways are designed. And it is not material that these new and improved methods of use were not contemplated by the owner of the land when the easement was acquired, and are more onerous to him than those then in use.

Cater v. Nw. Tel. Exch. Co., 60 Minn. 539, 543, 63 N.W. 111, 112 (1895)

The decided weight of authority as well as sound reason is in favor of the proposition that an abutting owner of property on a public highway has the easement, not only of light, air, and access, but of a reasonable view of his property from such public street.
Klaber v. Lakenan, 64 F.2d 86, 91 (8th Cir. 1933)

The ownership of the soil on which the street is laid being absolute, subject only to the street easement, the owner has the right to insist that the street shall be used and enjoyed for the legitimate purposes of its creation and existence, and for no others.
Newell v. Minneapolis, L. & M. Ry. Co., 35 Minn. 112, 114, 27 N.W. 839, 840 (1886)

It is well to bear in mind that the landowner's fee extends to the center of the street or highway, subject only to the public easement, and he may make use of his property 'for a purpose compatible with the free use by the public.'
Kooreny v. Dampier-Baird Mortuary, 207 Minn. 367, 370, 291 N.W. 611, 612 (1940)

Platted Street

The rule appears to be elemental that any abutting landowner owns to the middle of the platted street or alley and that the soil and its appurtenances, within the limits of such street or alley, belong to the owner in fee, subject only to the right of the public to use or remove the same for the purpose of improvement.
Kochevar v. City of Gilbert, 273 Minn. 274, 276, 141 N.W.2d 24, 26 (1966)

It is the rule in general, and in this state, that the dedication of land for a public highway confers a mere easement for public use as a highway, and the landowner retains a right to use the land for any lawful purpose compatible with the full enjoyment of the public easement.
Town of Glencoe v. Reed, 93 Minn. 518, 519, 101 N.W. 956, 957 (1904)

Right of the Public

As the right of use is public and common, every member of the public, i.e., every person, is entitled to avail himself of it; and hence no person can lawfully monopolize its use, or, what would amount to the same thing, use it so as to exclude any other person from it.
Newell v. Minneapolis, L. & M. Ry. Co., 35 Minn. 112, 114, 27 N.W. 839, 840 (1886)

If the use complained of is such that the public and common right of passage of persons and things cannot be enjoyed without substantial impairment on account of the manner of such use, then it is inconsistent with the public and common right, and not a proper and lawful use of the easement of the street. But no merely technical or trifling interruption or obstruction is to be regarded as a substantial impairment, for common sense requires that these words should receive a reasonable and liberal construction, and it must always be borne in mind that in organized civil society the individual must necessarily enjoy a common public right with reference to the general convenience and the rights of others.
Newell v. Minneapolis, L. & M. Ry. Co., 35 Minn. 112, 115, 27 N.W. 839, 841 (1886)

Right of Owner

[T]he rule that an action cannot be maintained at the suit of a private party to enjoin an obstruction or other nuisance in a public street or highway, where he has not suffered special or peculiar damages to his property or business. This rule is too thoroughly settled to admit of any discussion.
Gundlach v. Hamm, 62 Minn. 42, 44, 64 N.W. 50, 51 (1895)

The sidewalk here involved was wholly within the occupied and appropriated area taken by the public for its appropriate use. Everything lying back of it until appropriated by the public belonged to the lot owner.
Kooreny v. Dampier-Baird Mortuary, 207 Minn. 367, 370, 291 N.W. 611, 612 (1940)

Right/Authority of Road Authority

In considering the question of the extent of defendant's police powers with respect to the public streets, it should not be overlooked that it is generally accepted that municipalities possess extensive and drastic police powers with respect to the care, supervision, and control of streets. The exercise of such powers by municipalities has been upheld and sustained by the courts in a great variety of situations.

The limits of the police power are incapable of exact definition, but, stated generally, the power extends to all matters where public welfare, morals, health, and safety are involved. Inasmuch as in the instant case the question of public safety is involved, it should be noted that this has long been considered a legitimate and proper field for the exercise of the police power.
Alexander Co. v. City of Owatonna, 222 Minn. 312, 324, 24 N.W.2d 244, 251-52 (1946) overruled by Johnson v. City of Plymouth, 263 N.W.2d 603 (Minn. 1978)

> "While it is said that the right of access may be regulated by public authority, that does not mean, as the text cited shows (25 Am.Jur., Highways, s 154) that under the guise of regulation the right may be taken away from the owner. The power to regulate the right of access does not include that of taking it. * * *
> " * * * If there is to be a denial of plaintiff's right of access, it should be the result of a compensated taking under condemnation and not an uncompensated one under the guise of a police regulation."
> Johnson v. City of Plymouth, 263 N.W.2d 603, 608 (Minn. 1978)

In short, it may be said that in the case of country roads the public authorities have jurisdiction to do all that is necessary to meet the public necessities, and make the highway efficient and safe in every respect; but this is the extent of their authority.
Town of Glencoe v. Reed, 93 Minn. 518, 522, 101 N.W. 956, 958 (1904)

[T]he doctrine of courts everywhere, both in England and in this country * * * is that, so long as there is no application of the street to purposes other than those of a highway, any establishment

or change in grade made lawfully, and not negligently performed, does not impose an additional servitude upon the street and hence is not within the constitutional inhibition against taking private property without compensation * * *.
Haeussler v. Braun, 314 N.W.2d 4, 8 (Minn. 1981)

The control of streets and sidewalks by a municipality is not limited to the surface, but includes the space above and beneath the surface.
Oscar P. Gustafson Co. v. City of Minneapolis, 231 Minn. 271, 42 N.W.2d 809 (1950)

The permission of a city council to erect an obstruction thereto is no defense where the rights of a property owner have been infringed. A city cannot consent that the owner of one lot may appropriate portions of the street in front of his neighbor's property, or so use the street in front of his own property as to substantially injure his neighbor's property.
Klaber v. Lakenan, 64 F.2d 86, 91 (8th Cir. 1933)

The foregoing cases seem to indicate that where the encroachment is not clearly an obstruction to the public's use of the easement, there must be an adjudication that it is before it can be removed, and its taking without an adjudication that it could be lawfully done is compensable.
Kochevar v. City of Gilbert, 273 Minn. 274, 277, 141 N.W.2d 24, 27 (1966)

Right of Owners to Use ROW

The public has but an easement and the abutting owner may use the land for a purpose compatible with the use by the public of its easement.
Pederson v. City of Rushford, 146 Minn. 133, 134, 177 N.W. 943 (1920)

Whether a use is compatible, or is an obstruction, depends upon the character of the use by the abutter and the character of the street. What the municipality does in opening a street or determining its character is administrative or legislative; but the right of an abutting owner is given judicial protection.
Kelty v. City of Minneapolis, 157 Minn. 430, 431-32, 196 N.W. 487 (1923)

[C]ases illustrative of the doctrine that the owner of the fee retains the right to use the land for any lawful purpose compatible with the full enjoyment of the public easement, and that the private right cannot be disregarded by the authorities, but must be respected in so far as may be consistent with the public right to have a safe, unobstructed, and convenient right of way, taking into consideration the nature and the situation of the property and the circumstances of the case.
Town of Glencoe v. Reed, 93 Minn. 518, 519-20, 101 N.W. 956, 957 (1904)

Right to Use Unopened Platted Streets

Lot Owner

It is a well-established rule of law in Minnesota "that one purchasing a lot within a plat may rely upon the dedication of streets and alleys shown therein, and possesses the right to use the same." Etzler, 266 Minn. at 364, 123 N.W.2d at 611; accord Bryant v. Gustafson, 230 Minn. 1, 8, 40

N.W.2d 427, 432 (1950). Indeed, "[e]ach purchaser of a lot is entitled to the benefit of the plat as it appears when he purchases it. If there are public streets, they inure to his benefit."
Bolen v. Glass, 755 N.W.2d 1, 5 (Minn. 2008)

An individual lot owner has a peculiar right in the part of the street in front of his lot dedicated by the plat; but he has not a like right in the other dedicated parts of the plat; nor a right that the whole of the streets be kept unobstructed.
Locascio v. N. Pac. Ry. Co., 185 Minn. 281, 283, 240 N.W. 661, 662 (1932)

Public

Minnesota law is clear that the public has a property interest in platted streets that are undeveloped. Minn.Stat. § 505.01, subd. 1; *Etzler,* 266 Minn. at 363–64, 123 N.W.2d at 610; *see also St. Paul & Duluth R.R. Co. v. City of Duluth,* 73 Minn. 270, 275, 76 N.W. 35, 35 (1898) (stating that persons in possession of unopened platted streets "will, until the time arrives when such streets are required for actual public use, be presumed to hold subject to the permanent right of the public").
Bolen v. Glass, 755 N.W.2d 1, 5 (Minn. 2008)

Town

[U]nder s 505.01 the legal effect of a plat dedication is a conveyance in trust to the municipality of a terminable easement only, in any area designated in the plat for public use, and the fee title thereto remains in the dedicator, subject to the easement.
Etzler v. Mondale, 266 Minn. 353, 363-64, 123 N.W.2d 603, 610 (1963)

Light and Air

This state has long recognized that a landowner owning property abutting a public street possesses as appurtenant to his lot implied easements for light, air and view over the public street. . . . These easements extend to the full width of the street and are independent of any fee interest in the street held by the landowner.
Therefore, any interference with the light, air and view over a public street that results from the public's use of the street as a street, that is, from a proper street use, must be suffered by the abutting landowner without complaint to the courts. This is so because the implied easements do not entitle the landowner to every particle of sunlight or air that passes over the street. Rather, he is only entitled to the air, light and view that are not obstructed by a proper street use.
Haeussler v. Braun, 314 N.W.2d 4, 7 (Minn. 1981)

Gravel

It is quite evident from the trend of American decisions that the only limitation upon the rights of the owner of the fee to control and use the soil and other natural deposits within the limits of the highway is that such use shall be consistent with the full enjoyment of the public easement.

It was held that the owner of the fee was entitled to recover the value of the rock so carried away, but the decision was based upon the fact that it was not necessary to remove the rock for the purpose of grading or improving the street, it being located below the grade line.
[T]he contractor for the construction of a sewer was liable to the owner of the fee for the value of the stone taken from a ledge in the street, not necessary to be removed for the construction of the sewer.
Town of Glencoe v. Reed, 93 Minn. 518, 519, 101 N.W. 956, 957 (1904)

The public acquires in a street only a right of way, with the powers and privileges incident thereto. Subject to this right, the soil and mineral in a street belong to the owner of the fee, the same as if no street had been laid out. When the surface of the land is above grade line, so that in order to grade and improve the street it is necessary to remove superincumbent materials, this may be done, and probably such material may be used, if necessary, in improving other parts of the street; but the public easement justifies only the taking of material which the process of the construction or repair of the street requires.
Rich v. City of Minneapolis, 37 Minn. 423, 424, 35 N.W. 2, 3 (1887)

Retaining Walls

It can hardly be said that a wall encroaching 2 feet on an alleyway approximating 20 feet in width is an obstruction, especially where an adjoining barn protruding into the alley by 1 foot is not declared an obstruction.
Kochevar v. City of Gilbert, 273 Minn. 274, 277, 141 N.W.2d 24, 27 (1966)

Trees

The abutting lot owner owns the fee to the center of a platted street or alley and his ownership includes trees growing therein.
Pederson v. City of Rushford, 146 Minn. 133, 177 N.W. 943 (1920)

It does not follow that, merely because the trees are within the limits of Lake avenue as platted, the authorities have a right to remove them.
W. v. Vill. of White Bear, 107 Minn. 237, 239, 119 N.W. 1064, 1065 (1909)

Examples of Decisions Finding the Local Government Overstepped

1. Destruction of a wood shed and cutting and conversation of a tree in an unused alley after city gave notice to the owner to remove his property. The city gave no indication that it intended to open or improve the alley. "The tree was not an obstruction to public travel nor was it taken for a public use. The use made by the plaintiff of the alley for his woodshed was compatible with any actual or contemplated use by the public." "We think that the city took such part in the destruction of the tree and the removal of the woodshed as justifies a finding that it was liable therefor."
   Pederson v. City of Rushford, 146 Minn. 133, 135, 177 N.W. 943, 944 (1920)

2. Cutting of trees within a platted street "would answer no useful purpose, and would result in unnecessary injury to remove the trees at that point." Village was restrained from cutting the trees as it served no purpose.
   W. v. Vill. of White Bear, 107 Minn. 237, 239, 119 N.W. 1064, 1065 (1909)

3. Owner was held to be within his rights to remove gravel from an abutting ROW when the person did not injure the roadway and the gravel was not needed for grading the road. "[I]t follows that the public authorities have no power to prevent the entrance upon the highway by the owner of the fee for the purpose of enjoying the property rights incident to his ownership, and consequently their consent was not necessary."
   Town of Glencoe v. Reed, 93 Minn. 518, 522, 101 N.W. 956, 958 (1904)

4. Removal of a retaining wall and fence that intruded 2 feet into a 20 foot wide alley should not have occurred without a prior adjudication that they constituted an obstruction. "It can hardly be said that a wall encroaching 2 feet on an alleyway approximating 20 feet in width is an obstruction, especially where an adjoining barn protruding into the alley by 1 foot is not declared an obstruction."
   Kochevar v. City of Gilbert, 273 Minn. 274, 277, 141 N.W.2d 24, 27 (1966)