

Farm Management



Finding your right of way

Country Counsel

By ROBERT MOORE

SOME roads in Ohio, particularly township roads, were originally only trails or paths that over time were widened to accommodate vehicles. Occasionally a township or county seeks to widen the road to accommodate larger vehicles and/or increased traffic. An issue can arise as to what is the actual width of the right of way of the road.

A right of way is generally understood as referring to the easement acquired by the public in that portion of the land over which a road or highway passes. The right of way gives the public the right to travel across land that is otherwise private property. Most rights of way are well-documented in recorded easements that clearly establish their location and width. However, some roads were just assimilated into the roadway system without any official documentation.

Road builders

To establish the width of the right of way for a road, it must first be determined how the road came into existence. There are generally three ways in which a road is established. The first method is by statutory appropriation, where a board of county commissioners acquires the land and

Key Points

- A right of way is the easement acquired for public highway traffic.
- Key to setting a right of way is showing how the road came into existence.
- With no documentation, the size of the right of way is open to debate.

formally establishes it as a public road. Roadways established under this method after 1915 must be at least 30 feet wide unless the roadway will result in damage to structures, in which case the right of way may be reduced to 20 feet.

Another method of establishing a roadway is statutory dedication or common law dedication. In this process, a landowner gives land to the public for use as a roadway. A statutory dedication is a more formal process where the precise location and width of the road is well-established with recorded documents.

Common law dedication is informal and often does not involve any documentation of the actual width of the right of way given to the public. The right of way for a common law dedication is established by determining the width as is necessarily incident to the safe and efficient use of such road surface for actual travel. This determination is typically established by the county engineer initially and can be challenged by the landowner through the judicial system.

The final means of establishing a roadway is through prescription. This involves the public using the roadway for more than 21 years and the roadway being made public by mere use. Rights of way for roadways established by prescription are established in the same manner as the common law dedication. The right of way is created with enough width to allow for the efficient use of the road for actual travel. The right of way includes both the actual roadway surface and enough adjacent area to allow safe and efficient travel.

Landowners seeking to determine the width of the right of way of a roadway on their property should start with research at the county recorder's office. The county engineer may have maps and other historical documents that reference how the roadway became a public roadway and the initial width of the right of way. The county recorder will have any recorded easements for rights of way obtained by the county or township. If no documentation can be found related to how the road was established, then the right of way is open for interpretation and debate.

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