Understanding Estoppel in the Context of the Practical Location of Boundaries and Roadway Abandonment

Paul Voge, PLS, Esq

February 8, 2017

I. Definition of Estoppel

Estoppel is defined as a "bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true. *Black's Law Dictionary* (10th ed. 2014).

Estoppel provides an equitable remedy that is based on the concept of fairness. In practice, it serves to prevent someone from doing something that the court believes would create an unjust result based on the party's previous actions.

Legal variations of estoppel are in common use. The most common form is ***Equitable estoppel*** (also known as **estoppel *in pais*)** which is a defensive doctrine preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. This doctrine is founded on principles of fraud.

The five essential elements of this type of estoppel are that
(1) there was a false representation or concealment of material facts,
(2) the representation was known to be false by the party making it, or the party was negligent in not knowing its falsity,
(3) it was believed to be true by the person to whom it was made,
(4) the party making the representation intended that it be acted on, or the person acting on it was justified in assuming this intent, and
(5) the party asserting estoppel acted on the representation in a way that will result in substantial prejudice unless the claim of estoppel succeeds.
Black's Law Dictionary (10th ed. 2014).

Estoppel by deed is a form of estoppel that prevents a party to a deed from denying anything recited in that deed if the party has induced another to accept or act under the deed. Estoppel prevents a grantor of a deed, who does not have title at the time of the conveyance but who later acquires title, from denying that he or she had title at the time of the transfer. *Id.*

Promissory estoppel is the principle that a promise made without consideration may nonetheless be enforced to prevent injustice if the promisor should have reasonably expected the promisee to rely on the promise and if the promisee did actually rely on the promise to his or her detriment. *Id.*

II. Practical Location of Boundaries by Estoppel

a. The Law in Minnesota

The doctrine of *practical location of boundaries* is applied to settle disputes between adjoining landowners regarding the location of a common boundary. *Hacklander v. Parker*, 204 Minn. 260, 264, 283 N.W. 406, 408 (1939). The doctrine attempts to give effect to informal understandings or implicit agreements about the location of a common boundary, even when the result is to fix the boundary somewhere other than the location that a land surveyor would establish by following the written description.

Establishment of a boundary by practical location conveys the same title as that acquired through adverse possession. *Fishman v. Nielsen*, 237 Minn. 1, 6, 53 N.W.2d 553, 556 (1952). It may defeat a line established by survey. See *Wojahn v. Johnson*, 297 N.W.2d 298, 304 (Minn. 1980); *Phillips v. Blowers*, 281 Minn. 267, 274, 161 N.W.2d 524, 529 (1968). The finding of a boundary by practical location divests the record owner of title to the disputed area. See *Gifford v. Vore*, 245 Minn. 432, 436, 72 N.W.2d 625, 628 (1955); *Theros v. Phillips*, 256 N.W.2d 852, 858 (Minn. 1977). See also *Gabler v. Fedoruk*, 756 N.W.2d 725, 726 (Minn. App. 2008) (holding that when there is clear and convincing evidence that a boundary has been established by practical location, a trial court has no choice but to recognize that boundary and the resulting transfer of title to the disputed property).

"Only if a government survey, plat, or metes-and-bounds description is so flawed that there is a hopeless ambiguity in locating a boundary and if there is not a federal or state standard, caselaw principle, or surveyor's analysis available to resolve the ambiguity, a practical location of the ownership line between neighboring landowners may be a basis for resolving the problem." *Ruikkie v. Nall*, 798 N.W.2d 806, 816 (Minn. App. 2011)

Minnesota applies the doctrine of equitable estoppel in cases in which the claimant proves that:

(1) the record owner had knowledge of the asserted boundary line,
(2) the claimant incurred expenses in reliance on the record owner's silence, and
(3) it therefore would be unfair to deprive the claimant of the boundary line. *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 769–70 (Minn. 1982).

Because the effect of a practical location is to divest one party of property that is clearly his/hers by deed, the evidence establishing the practical location must be clear, positive, and unequivocal. *Beardsley v. Crane*, 52 Minn. 537, 54 N.W. 740 (1893); *Roy v. Dannehr*, 124 Minn. 233, 144 N.W. 758 (1914); *Dunkel v. Roth*, 211 Minn. 194, 300 N.W. 610 (1941).

It also should be noted that it is not necessary to show an actual intention to mislead by the party being estopped to deny the asserted boundary line for a practical location by estoppel to be established. *Thompson v. Borg*, 95 N.W. 896 (Minn. 1903). There can be no estoppel where the facts are equally known to both parties. *Id at* 898.

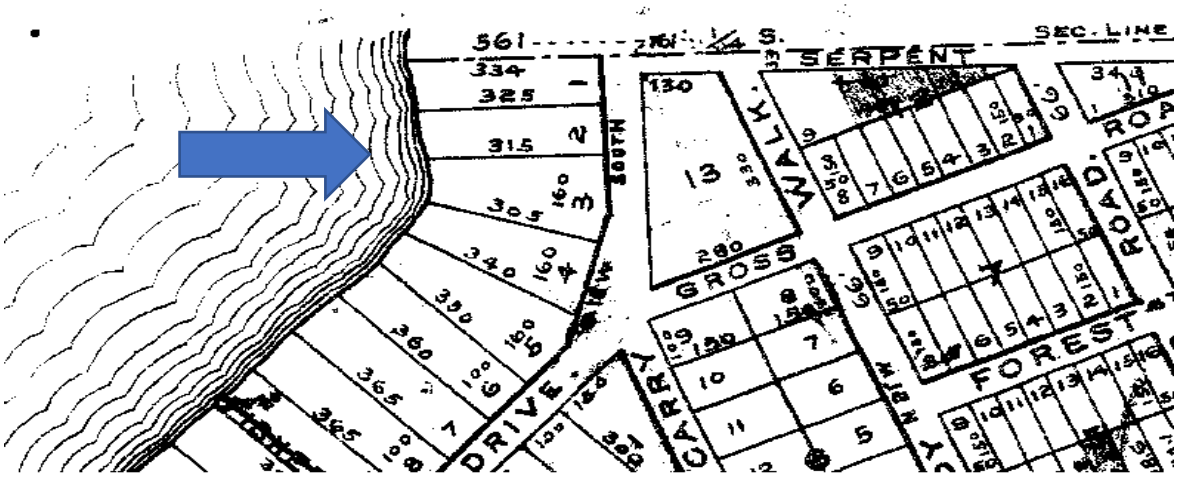
In an action to determine adverse claims, wherein boundary lines are in dispute and evidence relates almost entirely to location, the court has jurisdiction to determine boundary lines by practical location, even though it was not specifically plead or argued. *Neill v. Hake*, 93 N.W.2d 821, 827 (Minn. 1958).

In *Theros v. Phillips,* 256 N.W.2d 852 (Minn. 1977) the court held that there was insufficient evidence to support the ruling of practical location by estoppel because the disputed dividing line between the parcels was created by a party who had a principal ownership in both parcels at the time of the split, thus the record owner did not stand silent. The invaders also willingly maintained a parking lot that they knew they did not own, and sufficient alternative parking was available.

b. Are there different rules when a government entity is involved on one side of the disputed line?

No. A government entity can be estopped in denying a boundary line by practical location in the same manner as a private person because it is required to have knowledge of the true boundary line and to have looked on silently while another made valuable improvements on the property. *Halverson v. Village of Deerwood,* 322 N.W.2d 761, 769 (Minn. 1982). The requirement that the government entity look on in silence, with actual knowledge, affords the government "that increment of protection against the loss of public lands that is provided in adverse possession cases". *Id.*

Halverson involved Lots 1-4, Block 14 adjoining Serpent Lake in the 1892 plat of the Village of Deerwood in Crow Wing County. The Village of Deerwood owned lot 4 as a public park since 1911. The Halversons' predecessor in title, Blommen, opened and operated a resort with cabins on lots 2 and 3 in 1947.. The park on lot 4 contained a road that that ran the length of lot 4 down to Serpent Lake.

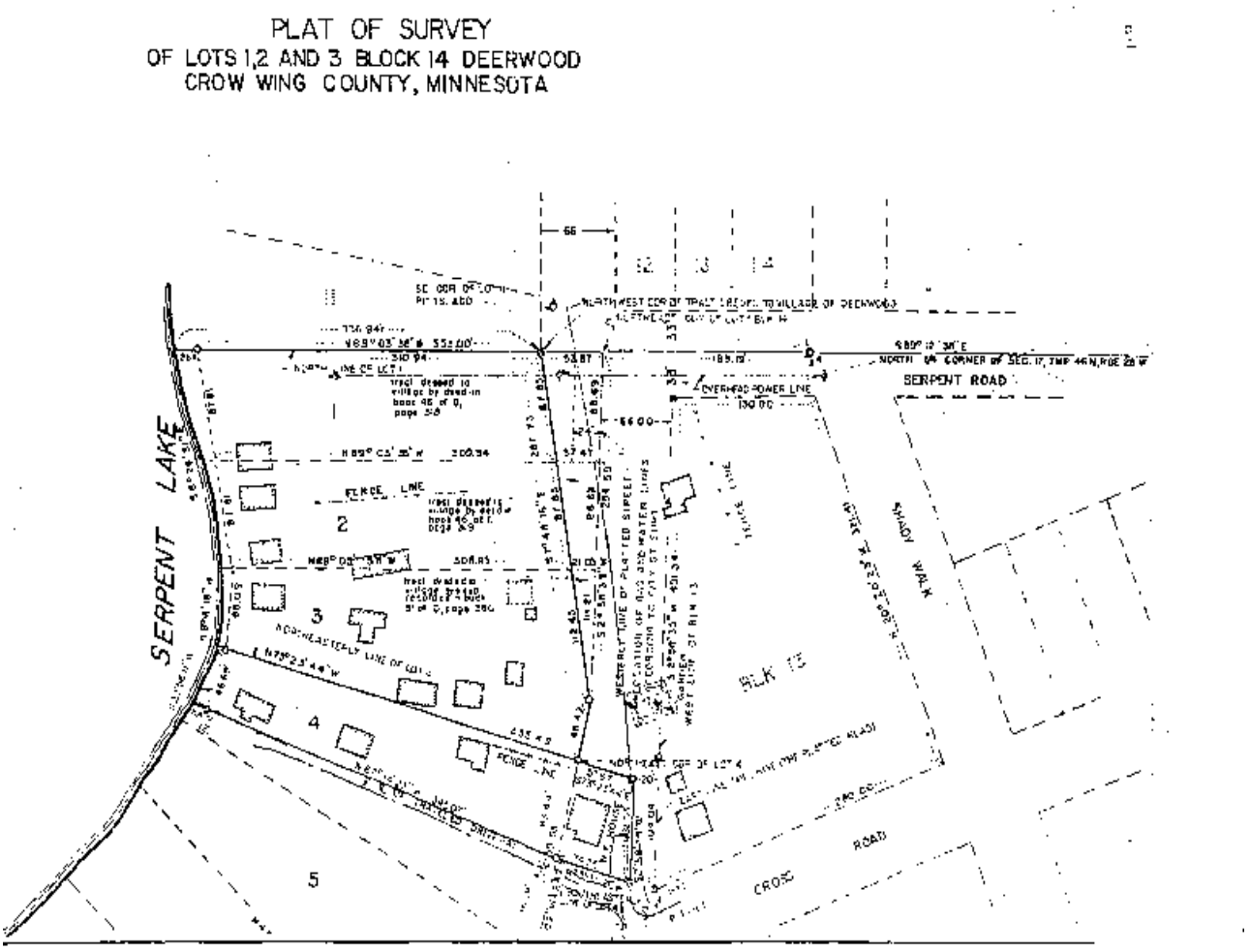


1892 Plat of Village of Deerwood

In 1947, Blommen received permission from the village to build a cabin on lot 4. Later that year there were actually three cabins constructed on lot 4. Between 1947 and 1956 Blommen mowed and otherwise maintained all of the land on lot 4 northerly of the park road on lot 4. A fence was placed on the north side of the road by Blommen to keep the public out.

In 1956 the Halversons purchased the resort on lots 2 and 3, as well as lot 1, and maintained and improved all of the resort structures, including the three cabins on lot 4. They were told by Blommen that the southerly property line was the north side of the road in the park. Taxes had been paid on the three cabins since 1956 as being part of lot 3.

In 1975, the Halversons were selling the resort on a contract for deed and a survey was performed that found that the three cabins were, in fact, on lot 4. The surveyor described the land down to the north side of the park road and the Halversons started a Torrens Action to register title and the boundary to determine title to land containing the three cabins.



1975 Survey

The trial court held:

- that the village was not *equitably* estopped from asserting its ownership in the whole of lot 4
- adverse possession could not be gained on village owned land.
- The 1947 building permit (license) remained in effect for the Halversons that further shows intent that use of the three cabins was permissive.

The parties then entered into a settlement agreement by which each party would hire a land surveyor and the two surveyors would in turn select a third surveyor. The surveyors were tasked with determining the lines of lots 1-4 "according to the filed plat".

The surveyors, however, determined that because of the poor dimensioning and lack of angular data on the plat, determination of platted lot lines was impossible. The surveyors, apparently on their own, decided that the boundary between the parties was to be determined by practical location. The surveyors unanimously

decided to accept the earlier survey conducted in 1975 that described the strip of land being occupied by the three cabins down to the north side of the park road.

The trial court rejected the surveyors' report, and the supreme court agreed, because it was inconsistent with the settlement agreement, as the surveyors were only to determine the boundary "according to the filed plat" and that the "decision of the surveyors to use practical location is also inconsistent with the intent of the parties since this doctrine necessarily requires the resolution of many issues normally beyond the scope of a surveyor's duties." *Id.* at 767.

However, possibly due to the surveyors' opinion regarding practical location, the supreme court chose to analyze the doctrine of practical location by estoppel, even though it was never pleaded by the parties or considered by the trial court. This was partly due to the fact that the lower court was unaware of the difficulty of locating the platted lot lines. The trial court assumed that both parties had always known the location of the common lot line.

The supreme court held that the Halverson boundary along the north side of the park road was established by practical location by estoppel because:

- The 1947 license to build the cabins was terminated upon the sale to the Halversons in 1956, as licenses are deemed revoked by a conveyance by the licensee. Thus, since 1956, the use of the three cabins and grounds on lot 4 was not permissive.
- The village knew where the north line of lot 4 was when it issued the permit in 1947. The Halversons never knew the location of the north line until the 1975 survey. The report of the three surveyors reinforced the fact that the platted lot line could not be easily determined, which supports the rule that estoppel is a remedy when both parties don't have equal access to the facts as to the boundary location.
- The village silently stood by and allowed the Halversons to improve, maintain, and pay taxes on the three cabins since 1956 to the detriment of the Halversons.

III. Abandonment of Roadways by Estoppel

Estoppel relating to private or public easements and right-of-ways differs from practical location of boundaries by estoppel in that the interest held in easements and roadways is not a fee interest. The holder of an easement interest can be estopped from asserting his/her interest through abandonment without the underlying fee interest changing. The law in Minnesota treats abandonment of road easements by estoppel under similar rules established under the common form of equitable estoppel (defined at the beginning of this paper).

In addition, the boundary of the road easement is generally not in question. The law looks at the evidence of nonuse coupled with actions by the easement holder that indicates an intent to abandon the use.

a. The Law in Minnesota

i. The Marketable Title Act (Minn. Stat. §541.023)

Statutory abandonment by estoppel can occur pursuant to the Marketable Title Act ("MTA") which provides, in part:

"As against a claim of title based upon a source of title, which source has then been of record at least 40 years, no action affecting the possession or title of any real estate shall be commenced….. to enforce any right, claim interest, incumbrance or lien founded upon any instrument event or transaction which was executed or occurred more than 40 years prior to the commencement of such action, unless within 40 years after such execution or occurrence there has been recorded….. a notice…. setting forth [the basis for the claim]" Minn.Stat. § 541.023, subd. 1.

The purpose of notice is to confirm the continuation of an interest in property and to eliminate stale claims that clutter the title. *Wichelman v. Messner,* 250 Minn. 88, 98, 83 N.W.2d 800, 812 (1957). According to the statute, "any claimant…..barred by the provisions of this section shall be conclusively presumed to have abandoned" all interests created. Minn.Stat. § 541.023, subd. 5.

The provisions of the statute, however, do not apply to "bar the rights of any person…. in possession of real estate." *Id.*, subd. 6. See also *Lindberg v. Fasching*, 667 N.W.2d 481, 485 (Minn. App. 2003).

What does "possession" of a road easement mean in the context of the MTA? The possession standard for easements should give "due regard ... to the nature of the easement" at issue, but that use of the easement should be "sufficiently obvious so that a prudent person would be put on inquiry regarding the existence of the easement." *Id.* at 486-87.

ii. Private Road Easements

Assuming that the easement holder can overcome the statutory requirements of the MTA, what are the rules for private road easements in order to establish abandonment be estoppel?

Abandonment of an easement is generally a question of fact. *Simms v. William Simms Hardware, Inc.*, 216 Minn. 283, 293, 12 N.W.2d 783, 788 (1943). To have the effect of divesting title and reinvesting the same in the grantor of the easement, the abandonment must amount to something more

than mere nonuse, for there must appear to have been an intentional relinquishment of the rights granted. This intention need not appear by express declaration, but may be shown by acts and conduct clearly inconsistent with an intention to continue the use of the property for the purposes for which it was acquired. *Norton v. Duluth Transfer Ry.*, 129 Minn. 126, 131-32, 151 N.W. 907, 909 (1915). *Hickerson v. Bender*, 500 N.W.2d 169, 170-71 (Minn.App.1993).
For nonuse of an easement to constitute abandonment, "affirmative and unequivocal acts indicative of an intent to abandon" must accompany nonuse. *Richards Asphalt Co. v. Bunge Corp.*, 399 N.W.2d 188, 192 (Minn.App.1987). The "affirmative and unequivocal act" standard sets a high bar to overcome.

In summary, proof of abandonment of a private road easement requires two steps:

1. Nonuse by the easement holder, and
2. Affirmative and unequivocal acts by the easement holder that indicate an intent to abandon.

In *Richards Asphalt Co. v. Bunge Corp*, the company brought action to enjoin corporation from using rail spur track easement across land owned by company, claiming corporation had permanently abandoned the easement. The court held that: (1) evidence supported conclusion that partial temporary obstruction of tracks by placing fill over tracks to prevent flooding did not constitute abandonment, and (2) *leaving fill for 16 years* did not convert temporary abandonment to permanent intent to abandon.

iii. **Public Road Easements: Is the standard different from private road easements?**

Yes.

Streets are often laid out and dedicated in a plat for the purpose of future development, as well as present requirements, and thus the landowner cannot assume that a road, or portion thereof, had been abandoned merely because it had not yet been used by the public. *Rein v. Town of Spring Lake*, 145 N.W.2d 537, 540-41 (Minn. 1966).

Municipal corporations are afforded an added degree of protection regarding their easement interest, as such, the doctrine of estoppel is not applicable to municipal corporations as freely and to the same extent that it is to individuals. When it is applied, the basis of application is usually not because of the nonaction of the officers of the municipality, but because they have taken some affirmative action influencing another, which renders it inequitable for the corporate body to assert a different set of facts.

Halverson v. Village of Deerwood, 322 N.W.2d 761, 767 (Minn. 1982) (citing *Village of Newport v. Taylor*, 225 Minn. 299, 306, 30 N.W.2d 588, 593 (1948)).

Five factors are necessary to establish public road abandonment based upon estoppel against a municipality (all factors must be met):

1. Long-continued nonuse by municipality,
2. Possession by private parties in good faith and in belief that its use as a street has been abandoned,
3. Erection of valuable improvements thereon without objection from municipality, which has knowledge thereof,
4. Great damage to those in possession if land were reclaimed, and
5. Some affirmative or unequivocal act of municipality which induced third person reasonably to believe in and to rely upon such act as intent in fact to abandon street.

Reads Landing Campers Ass'n, Inc. v. Township of Pepin, 546 N.W.2d 10 (Minn. 1996); *Halverson v. Village of Deerwood*, 322 N.W.2d 761 (Minn. 1982).

Affirmative and unequivocal acts by a municipality under factor 5, above, would include: (1) The actual physical relocation of the street and its improvement and maintenance as relocated over a period of many years; (2) the laying of municipal sewers and water mains in the street as relocated; and (3) the issuance by the municipality of building permits authorizing landowners and their predecessors to erect the buildings or other improvements upon the unoccupied, platted street area. See *Rein v. Town of Spring Lake* (Minn. 1966).

As a good example, we can turn back to the same case of *Halverson v. Village of Deerwood* that was discussed under the practical location section above, as this case also involved a structure built within a platted road. The Halversons were asserting that they had adverse possessed that portion of the platted street occupied by their home and adjoining improvements.

The facts of this portion of the case reveal that, in addition to maintaining the three cabins on lot 4, the Halversons, in 1958, constructed their personal residence on what they thought was the east side of lot 3. In clearing the land for home, they cleared many large trees, but found some cement pillars and a sewer pipe that they connected to along with a water service, all provided by the village of Deerwood.

The street had been used from 1892-1943 for deliveries as a 14'-16'wide street. The street was also used when the connecting east-west street to the north became flooded. The was no evidence presented as to the exact historical location of the road, and was deemed undeveloped.

In 1958, the Halversons inquired with the village mayor about building permits and were told they were not required.
In subsequent years the Halversons maintained 30-40 feet of yard around the home and blacktopped a driveway to the home. The home had been taxed as an improvement to lot 2 since construction. A power pole was placed in the platted street to service the home.
In 1970, a new water line was constructed to service the home on Block 13 to the east of the Halverson home.
The 1975 survey of the three cabins on lot 4 also included the Halverson home in the platted street. The surveyor described the street occupation area and it was included in the Torrens action, as described earlier.
The trial court found that this was a "classic example of estoppel" when it erroneously ruled that adverse possession was established.
The supreme court agreed on the estoppel acknowledgement and did not reach the issue of adverse possession. The supreme court applied the five factor test above and found:

- Deerwood's power pole servicing the Halverson home is on the platted street;
- the Halversons have paid over $6,000 in property taxes on their home;
- Deerwood provided water and sewer service to the Halversons; and
- the mayor of Deerwood in 1958 informed the Halversons that no building permit was needed and that the construction could proceed.
- Since 1956, when the Halversons took title to the resort, the village never used the street.
- The Halversons constructed this valuable improvement, their home, in the good-faith belief that they owned the land;
- The Halversons would suffer great monetary damage if the village were allowed to reclaim the street free of the structure.

iv. **Dealing with obstacles in the roadway easement. Do permanent encroachments into the recorded/dedicated right-of-way establish abandonment by estoppel by the easement holder?**

Not necessarily.

The answer depends on whether the encroachment is clearly an obstruction to the public's use of the platted road. See *Kochevar v. City of*

Gilbert, 141 N.W.2d 24 (Minn. 1966). "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." *Id.* at 26.

Whether the removal of the encroachment by the municipality is justified depends upon the character of the use by the abutter and the character of the street. *Id.* at 27 (finding that a wall encroaching 2 feet on a 20 foot wide alleyway is not an obstruction, especially where an adjoining barn that protruded into the alley by 1 foot was not declared an obstruction.)

The decision of a municipality to open a undeveloped road or improve an existing road with or without encroachments is a legislative or administrative decision, but the abutting landowner with the encroachment must be given due process to dispute the removal before action is taken by the municipality. See *Kelty v. City of Minneapolis*, 196 N.W. 487 (Minn. 1923) (a landowner that constructed a retaining wall and steps without a permit from the city and with notice of violation was still entitled to a judicial hearing and order declaring that removal was in the public's interest).

Adverse possession

The public can't lose its easement in a platted road through adverse possession by not objecting to the lot owner's occupation of the platted road. The municipality may choose its own time to occupy, open, and use the platted road. See *Newport v. Taylor*, 225 Minn. 299, 30 N.W.2d 588, 592 (1948). Until then, the lot owner may use the property subject to the public easement. *Id.*

Adverse possession requires a hostile use and, because the lot owner has the right to use the right of way, the use cannot be hostile. See *Pierro v. Minneapolis*, 139 Minn. 394, 166 N.W. 766 (1918).

Adverse possession of a dedicated/recorded public road is barred by statute as well. See Minn. Stat. § 541.01 ("no occupant of a public way . . . or other ground dedicated or appropriated to public use shall acquire, by reason of occupancy, any title thereto.").