

CORUM

REAL ESTATE COMPANY

(614) 487-8424 www.corum-realestate.com lclarke@corum-realestate.com

Easements and Eminent Domain

by Justice Paul E. Pfeifer, Ohio Supreme Court

Stanley and Kathryn Wasserman own a piece of farmland in Sandusky County, Ohio, that – because of a one hundred-year-old easement – became the center of a case that we reviewed here – at the Ohio Supreme Court.

The easement was created in 1915, for the purpose of draining the land the Wassermans now own. (An easement is “the grant of a use on the land of another.”) The easement gave the owner of the farm the right to construct and maintain a drain tile through the adjacent land to a discharge point into Minnow Creek. The Wassermans are successors in interest of that easement.

At some point during the last decade, the Wassermans built a lift station to further assist with drainage by pumping excess water into the drain tile that ran across the easement. Even with that, storm water commonly accumulated on their property after a heavy rain.

In 2002, the city of Fremont purchased 146 acres for construction of a reservoir. The purchase made Fremont subject to the easement because it ran over the city’s newly purchased property.

In 2005, the Wassermans and Fremont cooperated in replacing the old 12-inch pipe with two eight-inch plastic drainage tiles across the easement. Fremont paid almost \$4,000 for its share of the cost. Nevertheless, heavy rain still caused water to accumulate on the Wassermans’ farm.

Then, in 2009, in preparation for constructing the reservoir, Fremont replaced the two eight-inch tiles with a single 12-inch pipe.

In laying the pipe, the city rerouted the pathway of the drainage system so that it skirted around the project site rather than run straight through it. Fremont paid almost \$18,000 for the new drain tile and installation of a catch basin.

Although the Wassermans knew about the new pipe, they weren’t consulted about its installation or the rerouting. Stanley was present on the project site on several occasions, during which time he objected to the excavation and relocation.

Ultimately, the Wassermans filed a lawsuit alleging an unconstitutional taking of their land.

In response, Fremont asserted that throughout the installation of the new pipe, it made sure that it maintained and preserved the integrity of the Wassermans’ easement. It constructed a catch basin at the connection point to allow the flow of water from the Wassermans’ property to be monitored. And Fremont asserted that the 12-inch pipe has been working properly to drain storm water from the Wasserman’s across Fremont’s property.

The project manager stated that he personally observed the water discharging into the creek after a heavy rain, consistent with the water flow into the catch basin. But the Wassermans’ witness stated that because of the new arrangement, “the ability of the Wassermans to drain their property has been significantly diminished.”

The Wassermans alleged that the excavation process for the reservoir permanently damaged their eight-inch tiles, resulting in improper drainage of their property. Moreover, they alleged that due to Fremont’s posting of “no trespassing” signs, they have been denied access to the Fremont property to repair and maintain the tiles as provided by the 1915 easement.

On the basis that the actions constituted a taking of their property, the Wassermans requested that Fremont be compelled to commence eminent-domain proceedings to compensate them for their loss.

The court of appeals determined that a taking had occurred because Fremont had unilaterally destroyed and rerouted the original pathway of the 1915 drainage easement. The court ordered Fremont to commence eminent-domain proceedings to determine how much compensation was due to the Wassermans.

After that, the case came before us for a final review. The question before us was this: Did Fremont violate the easement so as to effect a taking by rerouting the original pathway of the 1915 easement, thereby justifying an eminent-domain action?

We determined that the answer depended on the language of the original easement. Under the terms of the original agreement,

Fremont’s predecessor “had the right to fix the line and depth of the original drainage tile.”

Therefore, according to the four-to-three majority, the question was whether the right to fix the line and depth means that Fremont retained the right to change that path or whether once set, the path was to remain fixed.

“The terms of the agreement are not clear on this point,” the majority said. “An easement should be interpreted to give effect to the language used in the instrument and to carry out the purpose for which it was created.”

According to the majority, “The purpose of the easement in this case was and remains to drain water from the Wasserman property into Minnow Creek. If the rerouted pipe still accomplishes that purpose, the rerouting does not violate the purpose of the easement.”

Therefore, the majority concluded that Fremont had the right to reroute the line as long as the drainage tile continues to fulfill its primary purpose, which is to drain the Wassermans’ land.

Justices Terrence O’Donnell, William M. O’Neill and I cast the dissenting votes. The majority opinion states that “the purpose of the easement in this case was and remains to drain water from the Wasserman property into Minnow Creek. If the rerouted pipe still accomplishes that purpose, the rerouting does not violate the purpose of the easement.”

But if the rerouting causes the pipe to carry water less quickly, then the purpose of the easement has been violated.

It is obvious that when all other factors – pressure, friction, etc. – are the same, but the length of pipe is increased, the water will drain more slowly. In our opinion, the rerouting has diminished the usefulness of the drainage, thereby affecting the purpose of the easement. Therefore, Justice O’Donnell, Justice O’Neill and I would have affirmed the judgment of the court of appeals.

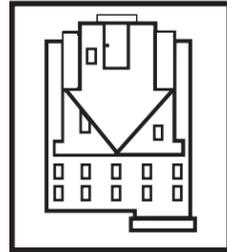
Nevertheless, the majority concluded that the Wassermans failed to show by clear and convincing evidence that a taking of their property had occurred, and our court therefore reversed the judgment of the court of appeals.

- Highland County Press, June 6, 2015

Larry Clarke
15362 Five Points Pike
Mount Sterling, Ohio 43143
Office: (614) 487-8424 / (740) 869-4570
lclarke@corum-realestate.com

CORUM

REAL ESTATE COMPANY



Real Estate Brokerage
Development Land & Farms
Commercial Real Estate

Real Estate Development

Consultants and Advisors
Construction Management
Site Selection
Estates
Workouts

Mount Sterling, OH 43143
P.O. Box 322

REAL ESTATE COMPANY
CORUM

Notable Quotables



Twenty years from now you will be more disappointed by the things you didn’t do than by the ones you did do. So throw off the bowlines. Sail away from the safe harbor. Catch the trade winds in your sails. Explore. Dream. Discover.

-Mark Twain

The only person you are destined to become is the person you decide to be.

-Ralph Waldo Emerson

You take away all the other luxuries in life, and if you can make someone smile and laugh, you have given the most special gift: happiness.

-Brad Garrett

That you may retain your self-respect, it is better to displease the people by doing what you know is right, than to temporarily please them by doing what you know is wrong.

-William J.H. Boetcker

Once or twice, or at the most three times, fate will reach out and tap a man on the shoulder. If he has the imagination, he will turn around, and fate will point out to him what fork in the road he should take. If he has the guts, he will take it.

-General George Patton

Self confidence is the most attractive quality a person can have. How can anyone see how awesome you are if you can’t see it yourself? -Unknown



Buying by the Square Foot: An Anti-Lean Practice

by Scott Sedam, TrueNorth Development

There is nothing in homebuilding that makes less sense than purchasing by the square foot and it is a big obstacle in Lean implementation. Other than the fact that it makes things easy I suppose, there is very little to be said for it. It damn sure makes purchasing inaccurate and confusing, at best. Not much of a tradeoff. Imagine, for a moment, buying an automobile by the pound. Do you think you could do any meaningful price/value comparisons? Worse yet, you are the purchasing manager for the new Superbo XLT4i Turbo 2.0? You send out the bid packages to buy tires, seats, carpet, dash components, transmissions, paint, hood ornaments, steering assemblies and, of course, turbo-chargers – and receive the bids back all in price-per-pound. How would you make sense of that? Answer: You wouldn't.

This comes up all the time in our LeanBuilding Blitz and LeanPlan Workout weeks with builders, suppliers and trades. Not long ago a Texas framer lamented that he had to bid 5 new plans of 5-6 elevations each. The builder insisted on a single "per square foot" bid price that applied to all units.

The problem is – and everyone, (everyone!) knows this to be true – the plans cost very different amounts per square foot to build. The Bristol is real simple, with big open spaces. Cheap & easy. The Brentwood plan is smaller, but with more cut-up living spaces. That costs more to build. The Dovewood has a bunch of trayed ceilings making things quite complicated. That cost's more, too. The Briarwood has elevations festooned with shutters, pop-outs and eyebrows – all adding both material and labor cost. Then there is that one elevation with the 32 corbels. Egad. And they want him to bid by the square foot? He is making his best guess and hoping it works out – as are you.

But the framer gives the price, because he has too. This problem becomes difficult when we put these plans through the Lean-wringer and simplify them greatly, (without negatively impacting the look or quality,) removing excess and oversized headers, unneeded framing lumber and over-spec'd EWP. A few elevations with a lot of junk hanging on them are

simplified. And I don't think I have ever seen a Texas house that wouldn't look better with a few less roofline breaks, and we fix those, too. All those moves saved labor and materials – but since you bid \$/sq ft, how do you value them? If we had genuine unit-costing, this would be easy and significant dollars could be removed.

Common and Simple Grammar Tips for Small Businesses – EAL News

by Catherine Spicer, PR Newswire

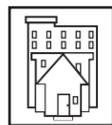
A small-business owner wears many hats. Most days, they wear the hat of innovator and champion. They provide the vision and the passion for their business, advocating for it at every opportunity. But, at the same time, they may also have to don the housekeeping hat, working late into the night to mop the floors.

When a small-business owner puts on the marketing hat to write a news release, they write fervent prose about their product or service. I forget which famous person coined the phrase "Image is everything," but when that news release or printed piece goes out into the world, that piece of content or collateral becomes an indelible image for your company or organization.

For small businesses, an investment in a news release or printed piece represents valuable resources requiring hard-earned money, so here are five grammar tips a small business should review before sending that news release or printed material out into the world.

Watch out for typos

Are you really good at pointing out typos in someone else's work? Take a close look at your own. PR Newswire's Customer Content Services team catches hundreds of typos per month. Pay particular attention to the headline. Typos in headlines are a lot easier to miss when you have your headline in all capital letters. Read through it carefully, change the casing around to see if something jumps out at you differently. Run spellcheck.



Watch out for inconsistencies

The devil is in the details. Read through the document again. Double check names of products or people to ensure they are spelled consistently (and correctly) throughout the release.

Check your punctuation

Here are my big three punctuation misses: 1) missing comma before the end of a quote; 2) missing punctuation at the end of a sentence or paragraph; 3) proper placement of apostrophes when trying to show possession. For some additional reference material, see my posts on "Punctuation Saves Lives" (parts I and II).

Use common language

I offer this tip specifically if the small business manufactures a specific B2B product. We have seen hundreds of releases about products from small businesses that were written so heavily with jargon, it was difficult to determine what the product actually did or for whom the release was being written. Keep the technical information relevant and directed to the specific audience you are trying to reach.

Use spellcheck wisely

Spellcheck can be such a frenemy. It can save you from embarrassment or set you up completely. By far, the most common example I see is the use of the word "manger" instead of "manager." Spellcheck has a cruel sense of humor with this word and others (like, "public" missing the requisite "l"), so make sure that you take those extra few minutes to read through one more time. Reading out loud helps.

Taking some extra time to make sure you have cleaned up grammatical problems in your work might seem tedious, but will pay dividends down the road. Before someone considers purchasing your product or service, a potential customer will form an instant opinion about your company or organization based on the material they have available (your website, seeing a printed ad, reading your company blog, or a news release). If "image is everything," making sure you have a strong grasp on grammar will ensure that your message and image is portrayed in the right light.

Grain prices may be lower than anyone in farming would like, but agriculture companies are still holding steady on the Fortune 500.

by Alison Rice, AgWeb.com

The annual list, compiled by Fortune Magazine for 61 years, ranks U.S.-based companies by revenue, based on publicly filed documents and includes countless American brands. What company grabbed the No. 1 spot? Wal-Mart, just like last year.

The Fortune 500 also includes a handful of agribusiness companies, from seed makers to equipment manufacturers to food companies.

Here they are, listed by their Fortune 500 rank.

4. Berkshire Hathaway, which owns railroad company BNSF, with \$195 billion in revenue for fiscal 2014.

34. Archer Daniels Midland, the Chicago-based food processor and commodities company, with \$81 billion in revenue in 2014. Has been on the Fortune 500 every year since 1955.

44. PepsiCo, maker of drinks and snacks, with \$67 billion in revenue for fiscal 2014. Has been on the Fortune 500 every year since 1955.

48. Dow Chemical, which is the company behind Dow AgroSciences' seed and crop protection business, with \$58 billion in revenue in 2014.

54. Caterpillar, which makes machinery for agriculture as well as heavy construction, with \$55 billion in revenue in fiscal 2014. Has been on the Fortune 500 every year since 1955.

63. Coca-Cola, the global beverage maker, with \$46 billion in revenue in fiscal 2014.

69. CHS, the Minnesota-based farmer-owned grain co-op, with \$43 billion in revenue in 2014.

83. Tyson Foods, the Arkansas-based meat producer known for its chicken, with \$38 billion in revenue in 2014.

86. Deere and Co., the iconic farm equipment manufacturer, with \$36 billion in revenue in 2014. Has been on the Fortune 500 every year since 1955.

87. DuPont, which sells Pioneer seeds and crop protection products, with \$36 billion in revenue in fiscal 2014. DuPont, founded in 1802, is one of the oldest companies on the Fortune 500.

91. Mondelez International, the Illinois-based firm behind Oreo cookies, with \$34 billion in revenue for fiscal 2014.

165. Kraft Foods Group, which makes the youthful favorite Macaroni and Cheese, with \$18 billion in revenue for fiscal 2014.

171. General Mills, which is the maker of Cheerios, with \$18 billion in revenue in fiscal 2014. Has been on the Fortune 500 every year since 1955.

173. ConAgra, the Nebraska-based packaged food company, with \$18 billion in revenue in fiscal 2014.

197. Monsanto, the largest seed company in the world, with \$16 billion in revenue in fiscal 2014.

203. Land O'Lakes, whose businesses include Purina animal nutrition and crop protection as well as its famous butter, with \$15 billion in revenue in fiscal 2014.

210. Kellogg, maker of Special K, with \$15 billion in revenue in fiscal 1955. Has been on the Fortune 500 every year since 1955.

244. Leucadia National, a holding company that owns National Beef, with \$12 billion in revenue in fiscal 2014.

272. H.J. Heinz, the ketchup company soon to merge with Kraft, with \$11 billion in revenue for fiscal 2014. Has been on the Fortune 500 every year since 1955.

296. AGCO, a Georgia-based farm equipment manufacturer, with \$10 billion in revenue in 2014.

306. Dean Foods, the largest bottler of fluid milk in the country, with \$10 billion in revenue in fiscal 2014.

310. Hormel Foods, whose Jennie-O turkey business has been impacted by the

avian influenza outbreak, with \$9 billion in revenue in fiscal 2014. Has been on the Fortune 500 every year since 1955.

320. Mosaic, a Minnesota-based supplier of phosphate and potash products, with \$9 billion in revenue for fiscal 2014.

342. Campbell Soup, which makes canned soups and other packaged foods, with \$8 billion in revenue for fiscal 2014. Has been on the Fortune 500 every year since 1955.

376. Hershey, the Pennsylvania-based chocolate maker, with \$7 billion in revenue for fiscal 2014. Has been on the Fortune 500 every year since 1955.

467. J.M. Smucker, the Ohio-based company behind jams, jellies, and other foods, including Pillsbury, with \$6 billion in revenue for fiscal 2014.

One final note: Just 57 companies have made the Fortune 500 list every year since its 1961 inception. The industry with the most companies qualifying for that honor? Food and beverage, with 10 long-lasting big firms.

Education Tip of the Month

Brought to you by GoodPayer.com, our Financial Wellness website

Budgeting: The Secret to Financial Success

The key to financial success and stability is knowing where your money is going. The most important tool that you can use to help you track your spending is a budget. Many people think of the word "budget" in a negative way, seeing it as a restriction on their spending, rather than the financial planning tool that it truly is. To help yourself put together a realistic budget that avoids overspending, write down all of your purchases throughout the month. This is called journalizing. Budgeting and journalizing are two powerful financial tools that will help you bring your spending under control. Controlling your spending will help you reach your goals over time.

If you don't have a budget yet, start putting one together today.