[Cite as *Mentor v. Cleveland Elec. Illum. Co.*, 2024-Ohio-397.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY

CITY OF MENTOR, Plaintiff-Appellee, - vs - CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al., Defendants, AT&T CORP., Defendant-Appellant.	**CASE NO. 2023-L-060** Civil Appeal from the Court of Common Pleas Trial Court No. 2021 CV 000312

O P I N I O N

Decided: February 5, 2024
Judgment: Affirmed

Joseph P. Szeman, City of Mentor Director of Law, 8500 Civic Center Boulevard, Mentor, OH 44060 (For Plaintiff-Appellee).

Kathleen A. Nitschke, Perez Morris, 1300 East Ninth Street, Suite 1600, Cleveland, OH 44114 (For Defendant-Appellant).

JOHN J. EKLUND, J.

{¶1} Appellant, The Ohio Bell Telephone Company dba AT&T Ohio (captioned as AT&T Corp.), appeals the judgment of the Lake County Court of Common Pleas granting summary judgment in favor of appellee, the City of Mentor. Appellee filed a Complaint for Declaratory judgment against appellant (and other utility entities not parties to this appeal) seeking a declaration that a certain utility easement was a public way under

R.C. 4939.01(N), that appellee was entitled to order appellant to relocate the facilities [1] out of the public way at appellant's sole cost under R.C. 4939.08, and that appellant is not entitled to reimbursement for the relocation of its facilities.

{¶2} Appellant has raised two assignments of error arguing that the trial court erred by finding that the utility easement was a public way under R.C. 4939.01(N) such that appellant must relocate its facilities at its sole cost. Second, appellant argues the trial court erred in denying its counterclaim seeking a writ of mandamus ordering appellee to initiate appropriation proceedings pursuant to R.C. 719.01(N).

{¶3} Having reviewed the record and the applicable caselaw, we find appellant's assignments of error are without merit. The trial court did not err in granting summary judgment in favor of appellee. Appellee was entitled to order appellant to relocate its utility facilities at appellant's own cost because the Diamond Centre Drive Project was a governmental function carried out in furtherance of appellee's police powers. Further, the 1991 Plat granting a utility easement to appellant created a public way under R.C. 4939.01(N) and appellee properly notified appellant of the necessity to relocate its facilities under R.C. 4939.08. Finally, appellee did not have a clear legal duty to initiate an appropriation action under R.C. 719.01(N).

{¶4} Therefore, we affirm the judgment of the Lake County Court of Common Pleas.

Substantive and Procedural History

{¶5} On March 16, 2021, Appellee filed a Complaint for Declaratory judgment against appellant and other defendants not parties to this appeal.

1. The facilities included telecommunication lines and a junction box located on a concrete pad.

{¶6} The complaint alleged that Diamond Centre Drive, a roadway located in the City of Mentor, was subject to appellee's care, supervision, and control pursuant to R.C. 723.01. In 1991, a dedication plat for Diamond Centre Drive was recorded ("1991 Plat"). The 1991 Plat granted a perpetual public right of way for both highway and utility use as follows:

> Be it known that Trask Land Development, Inc.an Ohio corporation by Jerome T. Osborne III its President does herby dedicate to public use, as such, Diamond Centre Drive (60 feet wide), as shown hereon and not heretofore dedicated.
>
> And does also hereby grant unto the City of Mentor, the Lake County Commissioners, the Ohio Water Service Company, the Cleveland Electric Illuminating Company, the Ohio Bell Telephone Company, the East Ohio Gas Company, and Continental Cablevision of Ohio, Inc., their successors and assigns (hereinafter referred to as the Grantees) and any other communication entities franchise to serve the community, a permanent right-of-way easement ten (10) feet in width, under, over and through all sublots shown hereon and delineated by dashed lines and labeled "utility easement", to construct, place, operate, maintain, repair, reconstruct, and relocate such underground electric, gas, water, sewer, and communication system cables, ducts, conduits, manholes, pipes, surface or below and above ground installed transformers, pedestal concrete pads, regulating and metering equipment, surface markers or other below and above ground facilities, fixtures and appurtenances as are necessary or convenient by the Grantees, for distributing, transmitting, and transporting electricity, gas, water, sewer and communication systems and signals for public and private use at such locations, as the Grantees may determine, upon, within and across the easement area and premises.
>
> The Grantees shall have the right without liability to remove trees, landscaping and lawns within the easement area as may be required to install, maintain, repair or operate said electric, gas, waterlines, sewer and communication systems.
>
> The Grantees shall be responsible to restore lawns, walks and drives within the easement area to as reasonable a condition as possible to the condition prior to an operation contemplated by this easement.

{¶7} In 1996, the Diamond Centre Drive right of way was increased to provide additional width for the expansion of the road and other infrastructure. The 1996 Plat provided as follows:

> Be it known that Trask Properties, Ltd., an Ohio limited liability company by Jerome T. Osborne, III does hereby certify that this exhibit correctly represents the portions of land adjacent to Diamond Centre Drive to be granted easements.
>
> The owners of the within platted land do hereby grant unto the City of Mentor, their successors and assigns (hereinafter referred to as the Grantees), a permanent highway easement in, upon, and over all lands known and delineated by cross hatching.
>
> The Grantees shall have the right to remove trees, landscaping, and lawns within the easement area as may be required to construct, repair, replace, maintain, operate and use a road and necessary appurtenances thereto, and forever to have and to hold such right for the purposes and conditions set forth.
>
> The Grantees shall be responsible to restore lawns, walks and drives within the easement area to a reasonable condition as possible to the condition prior to any operations contemplated by this easement.
>
> The highway easements granted by this document are subject to utility easements granted by the Diamond Centre dedication plat as recorded in Volume 15, Page 33, Lake County plat records, and any other previous easements or restrictions [i.e. the 1991 Plat].

{¶8} Appellee's complaint stated that decades of commercial development in the Diamond Centre Drive area resulted in increased vehicular traffic which diminished peak time service levels on Diamond Centre Drive and at an arterial intersection with Heisley Road. Therefore, expansion of Diamond Centre Drive became necessary to alleviate traffic congestion. Appellee devised a project to widen Diamond Centre Drive through the addition of two turn lanes at the intersection with Heisley Road. Appellee's complaint stated that the project was in furtherance of, and necessary to, the safety and welfare of

the public. Appellee said that the project would require the relocation of existing utility infrastructure owned by appellant and other defendants.

{¶9} Appellee alleged that appellant refused to relocate its utility facilities within the utility easement because, appellant argued, it was not responsible for the costs and expenses associated with relocation.

{¶10} Therefore, appellee sought declaratory relief in three counts: (1) the "1991 utility easement is a 'public way' within the meaning of R.C. § 4939.01(N);" (2) appellee could order appellant to relocate its facilities at appellant's sole cost and expense; and (3) appellant was not entitled to compensation for its loss of use of the easement.

{¶11} On June 25, 2021, appellant filed its amended answer and counterclaim. Appellant claimed it has a property interest through the 1991 and 1996 Plats and that the proposed relocation would deprive appellant of its entire property interest. Appellant requested that the trial court issue a writ of mandamus compelling appellee to institute appropriation proceedings and to determine fair compensation for such appropriation as required by law.

{¶12} Both parties filed Motions for Summary Judgment. On March 27, 2023, the trial court granted appellee's Motion for Summary Judgment against all defendants, including appellant. The trial court also denied appellant's Motion for Summary Judgment. The Court determined the utility "easement exists because it was part of the public dedication of Diamond Centre Drive. * * * There were no separate instruments of record granting private interests." Therefore, the court found as a matter of law that the utility easement "is a public easement and consequently a 'public way' in accordance with R.C. 4939.01(N)." The court further found that if appellant refused to relocate its facilities,

appellee could relocate them at appellant's sole cost and expense and that appellant was not entitled to compensation. Finally, the trial court determined appellant's counterclaim seeking a writ of mandamus to compel appropriation proceedings did not have merit because "there are no such private property interests."

{¶13} On April 21, 2023, co-defendant Cleveland Electric Illuminating Company filed a notice of appeal from the trial court's March 27, 2023 Judgment Entry granting summary judgment. That appeal proceeded in *City of Mentor v. Cleveland Electric Illuminating Company*, 11th Dist. Lake, Case No. 2023-L-041 (*CEI*).

{¶14} On May 30, 2023, appellant filed a notice of appeal from the same judgment entry and the matter proceeded in the present appeal. Appellant has raised two assignments of error.

Standard of Review

{¶15} We review a trial court's grant of summary judgment de novo. *Hapgood v. Conrad*, 11th Dist. Trumbull No. 2000–T–0058, 2002–Ohio–3363, ¶ 13, citing *Cole v. Am. Industries & Resources Corp*., 128 Ohio App.3d 546, 715 N.E.2d 1179 (7th Dist.1998). "We review the trial court's decision independently and without deference, pursuant to the standards in Civ.R. 56(C)." *Allen v. 5125 Peno, LLC*, 2017- Ohio-8941, 101 N.E.3d 484 (11th Dist.), ¶ 6, citing *Brown v. Scioto Cty. Bd. of Commrs*., 87 Ohio App.3d 704, 711, 622 N.E.2d 1153 (4th Dist.1993).

{¶16} Summary judgment is appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion and it is adverse to the nonmoving

party. *Holliman v. Allstate Ins. Co*., 86 Ohio St.3d 414, 415, 715 N.E.2d 532 (1999). "The initial burden is on the moving party to set forth specific facts demonstrating that no issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Dresher v. Burt*, 75 Ohio St.3d 280, 292–293, 662 N.E.2d 264 (1996). If the movant meets this burden, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id.*

Assignments of Error and Analysis

{¶17} Appellant's assignments of error state:

{¶18} "[1.] The trial court erred in finding that the Utility Easement is a 'public way' as defined by R.C. 4939.01(N) such that Ohio Bell must relocate its facilities at its sole cost. (T.d. 150-151, 160 and 208)."

{¶19} "[2.] The trial court erred in denying Ohio Bell judgment as a matter of law on its counterclaim seeking a writ of mandamus where the relocation of Ohio Bell's facilities out of the Utility Easement without just compensation constitutes an improper taking of a private interest in property." (T.d. 160, 208)."

{¶20} The fundamental issue before us is whether, under the facts presented, a municipality may order a public utility to relocate its utility facilities from an easement at the public utility's own cost. Appellant says no, asserting that the utility easement it holds is a "private easement" which is expressly excluded from the statutory definition of a "public way" and that appellee can order the relocation at appellant's sole cost only from a "public way" under R.C. 4939.08.

{¶21} We conclude that the 1991 Plat describes two public ways. This conclusion rests on two bases: first, that the 60-foot-wide Diamond Centre Drive was dedicated for

public use and qualifies as a public way; and second, that the ten-foot-wide utility easement on both sides of Diamond Centre Drive follows the language of COM 925.01(n), was dedicated to a compatible public use, and is also a public way.

Public Way:

{¶22} R.C. 4939.01(N) defines a "public way" as "land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled by a municipal corporation."

{¶23} "'The best definition of a public easement is often that given by public use.'" *Anderson v. Stuarts Draft Water Co.,* 197 Va. 36, 42, 87 S.E.2d 756 (1955), quoting *Canastota Knife Co. v. Newington Tramway Co.*, 69 Conn. 146, 36 A. 1107 (Conn.1897). "When an easement is created by an express grant * * *, the extent of and limitations on the use of the land depend on the language in the grant." *State ex rel. Wasserman v. Fremont*, 140 Ohio St.3d 471, 2014-Ohio-2962, 20 N.E.3d 664, ¶ 28. "When the terms in an easement are clear and unambiguous, a court cannot create a new agreement by finding an intent not expressed in the clear language employed by the parties." *Id.* "The language of the easement, considered in light of the surrounding circumstances, is the best indication of the extent and limitations of the easement." *Id.*

{¶24} First, the 60-foot-wide Diamond Centre Drive is a "public way" under R.C. 4939.01(N) because it is land dedicated for public use and controlled by the City of Mentor for compatible public use. The language of the 1991 Plat unambiguously "dedicate[d]" Diamond Centre Drive to "public use" which necessarily excludes and is incompatible with a private use as would be found in a private easement. *See Anderson* at 42.

{¶25} To determine whether that public use is a "compatible public use" which is "controlled by a municipal corporation" we turn to the Codified Ordinances of Mentor (COM). COM 931.01(a)(5) provides that the City of Mentor "has authority under the laws and constitution of the State of Ohio, including but not limited to Article 18, Section 3, 4, and 7, to regulate public and private entities which use the rights-of-way." "'Right(s)-of-way' means the surface and space in, on, above, within, over, below, under or through any real property in which the City has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public." COM 931.01(d)(41).

{¶26} The Codified Ordinances of Mentor also contemplate municipal primacy in use, control, and regulation over rights of way. COM 931.01(a)(7)(F)(1-6). Further, "[e]ach person who occupies, uses, or seeks to occupy or use the rights-of-way to operate a system located in the rights-of-way, or who has or seeks to have, a system located in any rights-of-way, shall apply for and obtain a Certificate of Registration pursuant to this Chapter." COM 931.02(b).

{¶27} Appellee, through the above ordinances, satisfied the "compatible public use" language in R.C. 4939.01(N) and maintained "authority * * * to regulate public and private entities which use the rights-of-way." *See* COM 931.01(A)(5). Appellee maintained an interest in Diamond Centre Drive through "law or equity" and held that interest "as a "trustee for the public." COM 931.01(d)(41). Appellee maintained control over the Diamond Centre Drive easement as a "trustee for the public" to ensure continued compatible public use. Indeed, the Diamond Centre Drive widening project itself demonstrates appellee's continued control over the easement to engage in compatible public use. Therefore, under R.C. 4939.01(N), the 60-foot-wide Diamond Centre Drive

easement is a "public way." These ordinances set forth a structure which leads to the conclusion that Diamond Centre Drive, although not owned by appellee, was, and is, controlled by appellee and that the nature of that control was, and is, decidedly "compatible for public use." *See* R.C. 4939.01(N).

{¶28} Second, we address the 10-foot-wide "utility easement" for Diamond Centre Drive. Again, R.C. 4939.01(N) contains a non-exclusive list of examples of a "public way," which includes "any other land dedicated or otherwise designated for a compatible public use." The statute expressly excludes a "private easement" from the definition.

{¶29} The 10-foot-wide "utility easement" was created in the same 1991 Plat dedicating Diamond Centre Drive to public use – through the 1991 Plat the landowner "does also hereby grant * * * a permanent right-of-way easement ten (10) feet in width * * *." COM 925.02(n) defines a "Utility Easement" as "Authorization by a property owner for the use of a designated part of his property for the specific purpose of constructing, placing, operating, maintaining, repairing, reconstructing or relocating facilities related to the distribution and transmission of utility services and/or any other communication entities franchised to serve the community, **for public and private use.**" (Bold added.)

{¶30} In 1991, Mentor Code of Ordinances Chapter 152 provided for subdivision regulations, which controlled the required platting provisions. Section 152.052 required a minimum 60-foot right of way for Diamond Centre Drive. Section 152.063(B) required an additional 10-foot-wide easement "adjacent to each side of and contiguous with all proposed rights-of-way. Such easements shall be usable for any and all underground utilities." The plain upshot of these is: no adjacent "utility easement," no effective dedication of Diamond Centre Drive to public use. Thus, the "utility easement" is part of

a series of events designed to do one thing: successfully "dedicate" Diamond Centre Drive "to public use." This is clear from the Mentor Code of Ordinances, which required the "utility easement" as a precondition to the City's accepting the dedication of Diamond Centre Drive.

{¶31} In *CEI*, 11th Dist. Lake, Case No. 2023-L-041, we faced an identical question of law arising from co-defendant CEI's appeal of the trial court's March 27, 2023 Judgment Entry. In that case, we concluded, for other reasons, that the public vs. private nature of the utility easement was immaterial to whether CEI "may be required to relocate its facilities without compensation" (*Id.* at ¶ 11) and answered the question "yes." Here, we conclude the public/private nature of the "utility easement" can be material, is so, and results in the same answer. The terms of the 1991 Plat are clear and unambiguous and establish a public way under R.C. 4939.01(N) and the above local municipal code. The 1991 Plat "dedicate[d]" a 60-foot wide right of way on Diamond Centre Drive "to public use." It also granted appellant and appellee a 10-foot-wide "permanent right-of-way easement * * * labeled 'utility easement' for distributing * * * communications systems and signals for *public and private use* at such locations, as the Grantees may determine, upon, within and across the easement area and premises." (Emphasis added).

{¶32} Appellant asserts the emphasized phrase "for public and private use" in the 1991 Plat as controlling. However, appellant's interpretation of the Plat's language "is forced and contrary to its obvious meaning." *See CEI* at ¶ 29**.** The "public and private use" language only describes who may use the communications systems and signals distributed through the facilities in the easement, i.e. any private or public customer. That is any and everybody; the picture of "public" use. The identity of end users of the outputs

from facilities on, over or through the easement does not describe the interest held in the easement itself. It is the very basis for appellant's legal status as a "public utility." *See* R.C. 5727.01(A). The **purpose** of the grant does not support appellant's conclusion that the **interest** in the grant is similarly a "public and private" interest. (Bold added.) *See CEI* at ¶ 29.

{¶33} Given the context of the 1991 grant, the 10-foot wide "utility easement" was an easement dedicated to the grantees for services to both public and private concerns as a pre-condition to dedicate Diamond Centre Drive to public use. Thus, it constitutes "land dedicated or otherwise designated for a compatible public use" under R.C. 4939.01(N). The language of the 1991 plat granting the "utility easement" follows the language of COM 925.01(n) and bolsters the plain meaning of the plat dedication.

{¶34} In accordance with R.C. 4939.01(N) and Chapter 152 of the Mentor Code of Ordinances, the 1991 Plat clearly set forth the public nature of the grant. The Plat set forth: (1) the dedication of land to public use (a road); (2) a 10-foot right of way so the adjacent landowners could be served by public utilities, that; (3) through appellee's right of way ordinances, was "controlled by a municipal corporation." *See* COM 931.01(d)(41) and R.C. 4939.01(N).

{¶35} Further supporting the conclusion that the 1991 Plat established a public way under R.C. 4939.01(N) is that the grant was not limited to the enumerated Grantees alone, but also provided for automatically adding other unnamed public utilities in the future. This provision would be in conflict with the grant of a private easement.

{¶36} The Diamond Centre Drive 1991 Plat created both a public way (Diamond Centre Drive) and a 10-foot-wide "utility easement" which qualifies as a "utility easement"

under COM 925.02(n). Both were dedicated to a compatible public use under R.C. 4939.01(N). Therefore, the 1991 Plat easements qualify as a public way as defined in R.C. 4939.01(N). *CEI,* 11th Dist. Lake, Case No. 2023-L-041 at ¶ 31.

Right to Order Relocation:

{¶37} We further determine that appellee acted within its authority under the Ohio Revised Code and local municipal ordinances to order appellant to relocate its facilities.

{¶38} R.C. 4939.08 addresses facility relocation procedures within public ways. The statute provides:

> If requested by a municipal corporation, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the public way at no cost to the municipal corporation, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with local law.

{¶39} COM 931.17(i)(1)(A) provides that the "City Engineer may request relocation and/or removal in order to prevent unreasonable interference by the provider's facilities with * * * [a] public improvement undertaken and approved by the City or County."

{¶40} On September 28, 2020, the Mentor City Engineer sent a letter informing appellant that the Diamond Centre Drive widening project "requires relocation of existing utility infrastructure * * * I understand your company's position to be that Mentor cannot require infrastructure relocation outside of the 'utility easement' without compensation. Based upon the following analysis, that contention is rejected, and the city is demanding relocation at your company's cost and expense. * * * In accordance with Ohio law and the Mentor Code of Ordinances, I therefore am ordering, at your company's sole cost and expense, the relocation of your facilities currently positioned along the north side of Diamond Centre Drive in the aforementioned 'utility easement' to a location within the

existing highway easement, beyond the limits of the proposed roadway pavement, in accordance with the construction drawings provided to you."

{¶41} As we observed above, the easement the 1991 Plat granted appellant and other public utility companies is a public way. Therefore, appellant was subject to appellee's order to relocate its utility facilities at appellant's own expense. Accordingly, appellee properly notified appellant of its intention to engage in the Diamond Centre Drive project and ordered appellant to relocate its utility facilities at appellant's own expense.

Compensation for Relocation:

{¶42} Finally, appellant's entitlement to compensation for the relocation of its utility facilities is not based on "the nature of the utility's interest in the easement, i.e., whether the easement is public or private, but rather the municipality's purpose in ordering the relocation of the facilities." *See CEI,* 11th Dist. Lake, Case No. 2023-L-041 at ¶ 13. Appellee is not responsible to compensate appellant for relocating its utility facilities.

{¶43} While appellant is entitled to constitutional protections for its property interests, the interests of a public utility are subject to a municipality's legitimate exercise of its police power. *See Perrysburg v. Toledo Edison Co.*, 171 Ohio App.3d 174, 2007-Ohio-1327, 870 N.E.2d 189, ¶ 13 (6th Dist.). This is true regardless of the public or private nature of the property interest. *Automatic Refreshment Serv., Inc. v. Cincinnati*, 92 Ohio App.3d 284, 288, 634 N.E.2d 1053 (1st Dist. 1993).).

{¶44} "'[T]he law is well established that a statutory, permissive right of use of public highways by public utilities is subordinate to the rights of the public; * * * and that a utility company may be required to relocate its lines at its own expense when such relocation is demanded by public necessity and for public safety and welfare.'" *AT & T*

Corp. v. Lucas Cnty., 381 F.Supp.2d 714, 717 (N.D. Ohio 2005), quoting *State of Tenn. v. United States*, 256 F.2d 244, 256 (6th Cir. 1958); *Perrysburg* at ¶ 17; *State ex rel. E. Ohio Gas Co. v. Bd. of Cty. Comm. of Stark Cty.*, 2012-Ohio-4533, 980 N.E.2d 1056, ¶ 44 (5th Dist.).

{¶45} Further, where a municipality orders the relocation of public utility facilities in the context of exercising a governmental function, there is no right to compensation. *See State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955); *E. Ohio Gas Co. v. City of Youngstown*, 7th Dist. Mahoning No. 19 MA 0007, 2020-Ohio-731, ¶ 37. (Sewer replacement project was a governmental function. and the utility company was properly "required to pay for the relocation of its gas line that occupied the public right-of-way.").

{¶46} In *CEI*, we found that the Diamond Centre Drive Project improvement constituted "a valid exercise of a governmental function in furtherance of the public safety and welfare." *CEI,* 11th Dist. Lake, Case No. 2023-L-041 ¶ 20; *see* R.C. 2744.01(C)(1)(e) (Governmental function includes "[t]he regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds[.]). Therefore, there has been no compensable taking regardless of whether the 1991 Plat was a public or private way. *See CEI* at ¶ 20.

Mandamus for Appropriations Action:

{¶47} Finally, we address appellant's counterclaim seeking a writ of mandamus to compel appellee to bring an appropriations action pursuant to R.C. 719.01.

{¶48} "Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law

specially enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01. "To be entitled to a writ of mandamus, the relator must be able to prove that: (1) relator has a clear legal right to have a specific act performed by a public official; (2) the public official has a clear legal duty to perform that act; and (3) there is no legal remedy that could be pursued to adequately resolve the matter." *State ex rel. Vance v. Kontos*, 11th Dist. Trumbull No. 2014-T-0078, 2014-Ohio-5080, ¶ 9.

{¶49} R.C. 719.01(N) provides:

> Any municipal corporation may appropriate, enter upon, and hold real estate within its corporate limits * * * [f]or the construction or operation of street * * * and other appurtenances for the transportation of persons, packages, express matter, freight, and other matter, in, from, into, or through the municipal corporation; and for such purpose any municipal corporation may appropriate any property within or without its corporate limits; and any municipal corporation may appropriate any property, right, or interest therein previously acquired by any private or public utility corporation for any purpose by appropriate proceedings, as well as the right to cross on, over, or under any street, avenue, alley, way, or public place or part thereof of any other municipal corporation, township, or county[.]

{¶50} Appellant argues it is without an adequate remedy at law because appellee's order to relocate its utility facilities constitutes a taking at law. Appellant says it is not subject to R.C. 4939.08, and that appellee has failed to bring an appropriations action as required by law.

{¶51} This argument fails based on our conclusion that the 1991 Plat grant was a public way under R.C. 4939.01(N) and that appellee properly notified appellant to relocate its facilities at its own costs pursuant to the Diamond Centre Drive Project. Therefore, appellee did not have a clear legal duty to initiate an appropriation action under R.C. 719.01(N).

{¶52} Accordingly, appellant's assignments of error are without merit.

{¶53} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas is affirmed.

MARY JANE TRAPP, J.,

MATT LYNCH, J.,

concur.