



# Municipal Law News

July 2014

## ON YOUR MARK, GET SET, GO: COURT OF APPEALS DECISION CREATES RACE TO THE COURTHOUSE IN ACTIONS TO QUIET TITLE INVOLVING MUNICIPALITIES

-Anne M. Seuryneck

In a decision that could lead to increased litigation against municipalities involving claims for adverse possession and acquiescence, the Michigan Court of Appeals recently held that a property owner is not statutorily barred from bringing such actions against municipalities as long as the property owner is the first to file suit. In other words, if the property owner sues the municipality to quiet title, the property owner's action may proceed. If the municipality sues the property owner to quiet title, the landowner is barred by statute from asserting its own claim(s) to the property.

In *Waisanen v Superior Township*, a property owner filed a quiet title action against Superior Township under theories of adverse possession and acquiescence. The municipality counter-claimed. Adverse possession is a legal doctrine that provides that a person in possession of land owned by someone else may acquire valid title to it, as long as certain requirements are met, and the adverse possessor is in possession for a sufficient period of time. Acquiescence is a similar doctrine related to the boundary lines of real property. The biggest distinction between the two doctrines is that in the case of adverse possession, the taking of the land must be "hostile" to the title owner's interest, while in acquiescence cases neither party to the dispute intends to take property from the other, but there is a mutual mistake as to the location of the actual boundary line.

The dispute in *Waisanen* came to light after a survey conducted by the municipality in 2008 revealed that the property owner's break wall and home addition, in place for over 25 years,

encroached on a lake access road dedicated to public use. The trial court ruled in favor of the plaintiff on both the adverse possession and acquiescence claims, and quieted title in favor of the property owner. The township appealed.

On appeal, the defendant-municipality argued that MCL 600.5821(2) barred plaintiff's claims. MCL 600.5821(2) provides that "Actions brought by any municipal corporations for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the periods of limitations."

continued on page 2 | **On Your Mark, Get Set, Go**

### UPCOMING WEBINAR

#### **Open Meetings Act: What Every Municipality Should Know- August 12, 2014**

As public bodies, municipalities must comply with the Michigan Open Meetings Act (OMA). Learn the basic requirements of the OMA, common pitfalls and ways to avoid those pitfalls. Attorney Anne Seuryneck will host this free webinar from noon to 1 p.m. To register:

<https://www1.gotomeeting.com/register/262585136>



## Municipal Law News

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On Your Mark, Get Set, Go | continued from page 1

In this case, the municipality did not bring the action against the property owner. Rather, it filed a counter-claim. In ruling for the plaintiff-property owner, the Court of Appeals found this fact – i.e., that the plaintiff filed suit first – dispositive. It stated that “MCL 600.5821(2) does not provide protection for a municipal corporation which has merely counterclaimed for possession in an existing action, rather than bringing an action of its own.”

The Court of Appeals acknowledged that its ruling could create a “race to the courthouse” scenario, with private property owners and municipalities each being incentivized to be the first to bring suit. But it further noted that it was up to the legislature “to fix such an arguably anomalous result.” In the meantime, municipalities should take stock of whether any private party is occupying or encroaching on public land and should consider filing an action to quiet title or risk losing the property.

## AT THE PODIUM

### P3 Forum - August 5, 2014

Attorney David Lick will be presenting on Public Private Partnerships at the Marquette Township Hall from noon to 2 p.m. August 5. Lunch will be provided. Interested in learning more about how you can benefit from public private partnerships? Register for the forum by emailing Marty Fittante at [mfittante@senate.michigan.gov](mailto:mfittante@senate.michigan.gov).

### MUNICIPAL ATTORNEYS

#### GROUP LEADER

**Anne M. Seurnyck**  
616.726.2240  
[aseurnyck@fosterswift.com](mailto:aseurnyck@fosterswift.com)

Michael R. Blum | 248.785.4722  
Karl W. Butterer | 616.726.2212  
Nichole J. Derks | 616.796.2516  
James B. Doezema | 616.726.2205  
Laura J. Genovich | 616.726.2238  
Brian G. Goodenough | 517.371.8147  
Lisa J. Hamameh | 248.539.9906

Richard L. Hillman | 517.371.8129  
Michael D. Homier | 616.726.2230  
John M. Kamins | 248.785.4727  
Thomas R. Meagher | 517.371.8161  
Brian J. Renaud | 248.539.9913  
Ronald D. Richards | 517.371.8154

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