# Michigan Municipal Corporations Lose Statutory Protection in Adverse Possession and Acquiescence Actions Brought by Private Parties

By Brett E. Vasicek, Richard A. Sundquist / Nov 11, 2014

A recent published opinion by the Michigan Court of Appeals could greatly affect the ability of Michigan municipal corporations (including, potentially, public school districts) to protect their property ownership interests from claims for adverse possession or acquiescence brought by private parties. The period of limitations applicable for adverse possession and acquiescence claims is 15 years. The opinion has generated an uncommon amount of interest and concern by real estate professionals as well as townships and school districts.

In *Waisanen Family Trust v Superior Twp*, 305 Mich App 719 (2014), the Court of Appeals rejected the defendant township's appeal of the trial court's determination that it was not entitled to statutory protection from the plaintiff's quiet title action based on alternate theories of adverse possession and acquiescence. In this case, a trust owned property abutting a lake access roadway dedicated to public use. The lake access road was part of a 1925 platted subdivision located in Superior Township in Chippewa County. At the time the predecessor to the trust bought the property in 1971, the property contained a break wall and a residence. The plaintiff constructed an addition to his home on the property about ten years later. The township ultimately conducted a survey in 2008 of all its lake access roadways and discovered that the break wall encroached approximately ten feet onto the public street and the home's addition encroached about three feet.

To protect its investment in the property, in 2009 the trust filed an action in circuit court to quiet title to the portions of the road upon which the break wall and addition encroached. The township, as defendant in the action, then brought a counterclaim for possession of the same portions of the road seeking to remove the break wall and addition. The circuit court ruled in favor of the plaintiff, finding that it had satisfied the elements of adverse possession, or in the alternative, had acquired title through acquiescence.

At issue on appeal was the applicability of MCL 600.5821(2). MCL 600.5821 provides in relevant part:

> (1) Actions for the recovery of any land *where the state is a party* are not subject to the periods of limitations, or laches. However, a person who could have asserted claim to title by adverse possession for more than 15 years is entitled to seek any other equitable relief in an action to determine title to the land.
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> (2) 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. (emphasis added)

For decades, practitioners believed this statute provided protection to both the state and municipalities from individuals claiming title to property owned by the government in claims of adverse possession or acquiescence. Consistent with this belief, the township here argued that its land was not subject to the plaintiff's claims to title. With its ruling in *Waisanen*, however, the Court of Appeals has upended the traditional notion and now leaves municipal corporations exposed to the threat of losing property through adverse possession or acquiescence claims.

Noting the different language used in subsections 1 and 2, the Court held that only **the state** is not subject to the 15-year period of limitations in all actions in which a person is seeking to quiet title to land. **Municipal corporations**, on the other hand, are only protected in actions *brought by them* for the recovery of possession of public land. Therefore, a municipality that brings a counterclaim for possession in an existing action, rather than originally bringing an action on its own, does not qualify for the protection provided in MCL 600.5821(2). The Court's interpretation of the statute thus creates situations where the municipality's ability to claim the statute's protection turns on which party wins the race to the courthouse, a consequence that did not go unnoticed by the Court.

All municipal corporations must now be aware that they are susceptible to losing property to individuals who bring quiet title actions against them based on adverse possession or acquiescence. This should be of special concern to public school districts that frequently own many parcels of property scattered throughout different neighborhoods. While often thought of as political subdivisions of the state, the law is not entirely clear on whether public school districts might instead be treated as municipal corporations under the statute.

In light of the *Waisanen* ruling, school districts and other municipalities should proactively investigate and police their properties to ensure there are no encroachments from neighboring property owners. If such encroachments are discovered, schools should take preemptive action by filing an action to quiet title and seek possession of the disputed property before the neighboring party brings a claim first. If, and only if, a municipal corporation (which may include a public school district) brings its action for possession first will it receive the statutory protection from claims of adverse possession or acquiescence under MCL 600.5821(2).

The *Waisanen* case has not been appealed by Superior Township nor has the Michigan Legislature taken any action in response to the invitation by the Court of Appeals to do so.

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