

Sue Jeffers is a legal consultant to the League. You may contact her at [sjeffers@mml.org](mailto:sjeffers@mml.org).

# Municipalities may be subject to claims to quiet title under MCL 600.5821(2)

## FACTS:

In 1971, Kenneth Waisanen purchased property in the Jordan Beach subdivision. The parcel abuts First Street, a lake access roadway dedicated to public use. When purchased, the property contained a break wall. In 1981, Waisanen constructed an addition to the house. In 2008, Superior Township conducted a survey that indicated that the break wall encroached ten feet onto First Street and the addition approximately three feet. Waisanen filed an action to quiet title in his name on the basis of adverse possession and acquiescence to the portion of First Street that included Waisanen's break wall and addition. The township, as defendant, filed a counterclaim for possession of that same portion of First Street.

Adverse possession of property requires clear and cogent proof that possession of the disputed property has been actual, visible, open, notorious, exclusive, continuous and uninterrupted for the statutory period of 15 years. The use of the property must be "hostile" that is "without permission and in a manner that is inconsistent with the rights of the true owner." Acquiescence is basically a claim for title based on the recognition and acquiescence of the parties to a boundary line for a period of 15 years.

The statute that provides municipalities with relief, under certain circumstances, from the claims for possession is as follows:

MCL 600.5821(2): Actions brought by any municipal corporation for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the periods of limitation.

In the present case, Waisanen claimed title by adverse possession and also by acquiescence on the basis that he had adversely possessed the property in excess of 15 years and that the township had actively and passively acquiesced to the boundary line for a period in excess of 15 years. The township, however, argued that the statute applies since it had filed a counterclaim and that Waisanen was precluded from claiming title to the property against the township.

## QUESTION:

Does subsection 2 of the statute apply where a municipality is a defendant to a claim for adverse possession or acquiescence and had filed a counterclaim for possession of the property?

### A: Answer according to the trial court:

The circuit court granted Waisanen's request to quiet title in his favor, finding that Waisanen had acquired title through acquiescence or in the alternative through adverse possession. The circuit court did not apply the statute to Waisanen's claims.

### A: Answer according to the Michigan court of appeals:

The Michigan Court of Appeals agreed with the circuit court and held that subsection 2 of the statute did not apply. The court held that the statute does not bar claims for either adverse possession or acquiescence unless they occur in an action brought by a municipal corporation for recovery of possession of the property. The court rejected the township's assertion that its counterclaim was an "action brought by any municipal corporation." The court further found that Waisanen satisfied the elements of adverse possession and acquiescence and quieted title in *Waisanen*. The court noted that it was the Legislature's responsibility to "fix" the statute if, in fact, subsection 2 did not represent its intent regarding protection for municipal corporations.

*Waisanen v Superior Township*, No. 311200 (June 24, 2014).

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.