STATE OF MICHIGAN
MICHIGAN SUPREME COURT

FLORENCE BEACH; CYNTHIA B. GUTHRIE; DONALD E. JAEKLE, JR., as Trustee of the ANN B. JAEKLE REVOCABLE TRUST; LILLIAN B. MUMAW; and DWIGHT E. BEACH, JR.,

Plaintiffs/Counter-Defendants/Appellees,

v

TOWNSHIP OF LIMA,

Defendant/Counter-Plaintiff/Appellant,

and

JEFFREY V. MUNGER,

Defendant.

Supreme Court
File No. 139394

Court of Appeals
File No. 274920

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# MICHIGAN MUNICIPAL LEAGUE, MICHIGAN TOWNSHIP ASSOCIATION, AND PUBLIC CORPORATION LAW SECTION OF STATE BAR OF MICHIGAN *AMICUS CURIAE* BRIEF

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## STATEMENT OF APPELLATE JURISDICTION

Michigan Municipal League, the Michigan Township Association, and the Public Corporation Section of the State Bar of Michigan, accept and adopt by reference Lima Township's statement of Appellate Jurisdiction and state further that this amicus curiae brief is submitted pursuant to this Court's Order of January 22, 2010 and MCR 7.306.

## STATEMENT OF PROCEEDINGS AND FACTS

Michigan Municipal League, the Michigan Township Association, and the Public Corporation Section of the State Bar of Michigan, accept and adopt by reference Lima Township's statement of material proceedings and facts.

## STATEMENT OF QUESTION

I. **Whether a plaintiff who seeks to establish an adverse possession claim that would affect a publicly dedicated road in a recorded plat must file a claim under the Land Division Act, MCL 560.101 *et seq.*, if the plaintiff is not expressly requesting that the plat be vacated, corrected or revised.**

The Trial Court Answers: "No"

The Court of Appeals Answers: "No"

The Appellant Answers: "Yes"

The Appellee Answers: "No"

## INTRODUCTION

The Michigan Municipal League, the Michigan Township Association, and the Public Corporation Section of the State Bar of Michigan, appear as *amicus curiae* in support of the appeal by Lima Township seeking reversal of the decision of the Court of Appeals which determined that plaintiffs may assert a claim of title and exclusive possession to dedicated streets in a plat without filing an action to vacate, correct or amend such plat pursuant to the provisions of the Land Division Act (LDA), MCL 560.101 *et seq*. The Court of Appeals erred in affirming the trial court, which wrongly applied long standing precedent from this Court which clearly provides that any effort to vacate, correct or amend a plat must comply with the procedural requirements of the LDA. *Martin v Beldean*, 469 Mich 541; 677 NW2d 312 (2004); *Binkley v. Asire*, 335 Mich 89, 96-97; 55 N.W.2d 742 (1952).

The Court of Appeals' decision, leaves to any particular litigant's own discretion whether to file or not to file a LDA action with other equitable claims which may result in the vacation of platted and dedicated streets, and fails to pronounce a clear rule which has severe consequences on cities, villages, townships and public corporations in this State. If the Court of Appeals' decision stands, the clear consequence would be uncertainty regarding the core decisions of local government. These core decisions include, but are not limited to, zoning, access to real property, utilities, liability considerations, and the valuation of property for the operation of local government. As a further consequence, reliability upon such plats will no longer be the rule for municipal planners and developers. Communities require identity. This identity, however, runs the risk of being lost in a patchwork of privately declared interests that may or may not be evidenced by recorded plats, depending solely on whether a private litigant chooses to also file a LDA action commensurate with their equitable claims.

There exist in Michigan over 66,000 recorded plats. (Michigan Department of Energy, Labor & Economic Growth, www.dleg.state.mi.us/platmaps/sr_subs.asp ). Municipalities and other interests rely upon these duly recorded instruments for purposes of protecting and preserving the common welfare. Being able to rely on the platted and dedicated public streets has a profound impact on a community's ability to not only provide important public services, such police and fire protection, but also provides important parameters in the areas of zoning enforcement, maintenance and extension of public utility services, and even tort liability protection. The foundation of such reliance rests in the knowledge that the public streets and ways depicted in recorded plats will not be altered, unless the strict statutory procedures pronounced by the LDA are honored.[1] The decision by the Court of Appeals has not only undermined this foundation, but provides no reliable footing on which certainty in public governance may reliably proceed, thus creating unnecessary confusion and uncertainty where none need exist.

[1] This Court's order granting leave also included amicus participation by the Real Property Section of the State Bar of Michigan. Local governmental and real property interests are congruent regarding the need for certainty in real property transactions.

## ARGUMENT

**I. A circuit court action filed for purposes of terminating the rights of existing and future lot owners in a plat to use dedicated streets in a recorded plat is an action to vacate, correct or revise a plat and must necessarily be brought under the provisions of the LDA. The Trial Court and Court of Appeals erred in permitting plaintiffs an action to quiet title based on the claim of adverse possession.**

### A. Standard of Review

Whether the plaintiffs were required to bring their action for a declaration of title and exclusive possession to streets dedicated by a recorded plat in a LDA proceeding is a question of law that is reviewed *de novo*. *Martin v Beldean,* 469 Mich 541, 546; 677 NW2d 312 (2004).

### B. The awarding of title and exclusive possession to dedicated streets in a plat to an adjoining lot owner is clearly a vacation, correction, or revision of the plat which may be attained only through an action under the LDA.

This appeal concerns an action by lot owners in the Plat of the Harford Village, located in Lima Township, seeking a declaration of quiet title and exclusive possession of certain lands within such plat, including lands dedicated as streets. (Appellant's App. pp. 37a). The dedicated streets at issue are identified in the Harford Village plat as Cross, North, and East streets which all are depicted in the recorded plat as north-south streets within the plat. (Appellant's App. p. 263a and 266a). While Plaintiffs argue that their action to quiet title, based on a claim of adverse possession, did not expressly seek to vacate such platted streets, this argument is belied by the clear and unmistakable relief granted by the Trial Court in this matter which orders as follows:

> **To the extent it is necessary <u>the Harford Plat shall be corrected to remove</u> Cross, North, and East Streets and vest title in favor of the plaintiffs.**

(Trial Court Opinion and Order, Appellants' App. p. 23a).

The relief granted by the trial court is unmistakable and no matter how characterized by Plaintiff, results in judicial action available only under the exclusive provisions of the LDA. MCL §560.226.

Pursuant to the LDA,

> **Except as provided in section 222a, to vacate, correct, or revise a recorded plat or any part of a recorded plat, a complaint shall be filed in the circuit court by the owner of a lot in the subdivision, a person of record claiming under the owner, or the governing body of the municipality in which the subdivision covered by the plat is located.**

MCL 560.222 (emphasis added). Moreover, MCL 560.224a requires that "the plaintiff shall join as parties defendant" certain enumerated parties, including "the municipality in which the subdivision covered by the plat is located." Joining the municipality in which the plat is located, together with other "necessary parties," has been considered crucial in any action to vacate, correct or revise a plat, even if the land subject to plaintiff's ownership equitable claims is not dedicated as public. *Martin v Beldean,* 469 Mich at 550 (seeking to have private dedication of land identified as Outlot A declared "null and void"). As observed by the lower court in *Martin, supra*, Outlot A was "reserved for use of the lot owners" and was claimed to used "as a place from which to launch boats and swim." *Martin v Beldean,* 248 Mich App 59, 62; 638 N.W.2d 142 (2002), rev'd by *Martin v Beldean,* 469 Mich 541, 546; 677 NW2d 312.

After considering a claimant's reasons in support of a petition to alter a plat and the reasonable objections of interested parties, the circuit court "may order a recorded plat or any part of it to be vacated, corrected, or revised." MCL 560.226(1). The only exception to the circuit court's authority to enter such order concerns dedicated highways, roads or streets under control of the state, county or local governments. MCL 560.226(1)(a)–(c) (providing that no such public highways, roads, streets or alleys may be vacated without the affected governmental

entities' agreement to do so). When, however, there is a question as to whether publicly dedicated streets have been accepted by the municipality, it is possible to vacate such dedicated public ways within a LDA proceeding. *Kraus v. Department of Commerce*, 451 Mich. 420, 424-425, 547 N.W.2d 870 (1996). It is important to recognize that in *Kraus v. Department of Commerce, supra*, Plaintiffs therein, as the Plaintiff here, was attempting to establish superior title to dedicated but claimed unaccepted streets by claim of adverse possession and did proceed to vacate part of the applicable plats at issue under procedures of the LDA. *Id.* at 423.

Plaintiff contends that her action "**was not seeking to acquire title, but only judicial recognition of title already acquired by adverse possession.**" (Appellee's Brief, p.35). Plaintiff argues further that

> **[b]ecause title to the streets in dispute ('North,' 'Cross' and 'East') passed to the Beach family well over 100 years ago *by operation of law* upon the expiration of the 15-year statutory period found in MCL 600.5801(4), Ms. Beach properly filed an action for quiet title based upon a claim of adverse possession, as opposed to an action under the LDA."**

*Id.* (emphasis added).

The Court of Appeals appears to have accepted, at least in part, Plaintiff's argument that her interest in the disputed lands "may have been previously altered by operation of law under MCL 600.5801(4) and its associated doctrine of adverse possession." *Beach v. Lima Twp.*, 283 Mich App 504, 519, 770 N.W.2d 386 (2009). Contrary to Plaintiff's argument, however, the Court of Appeals concedes that a LDA proceeding may necessarily determine the validity of such claimed interests. The Court of Appeals observed as follows:

> **Even if it can be said that the court is altering substantive property interests by finding in favor of an adverse possessor, as opposed to merely determining existing property interests that were previously altered by operation of MCL 600.5801(4), the alteration would still be proper within an LDA lawsuit as long as it was based solely on**

**adverse possession principles and not the LDA's provision allowing the court to vacate, correct, or revise a plat, MCL 560.221.**

*Beach v. Lima Twp.*, 283 Mich App at 519; 770 N.W.2d 386, FN 4. The Court of Appeals concluded, however, "that while there is no *requirement* to do so, an adverse possession claim *may* be brought under the LDA." *Beach v. Lima Twp.*, 283 Mich App 504, 515, 770 N.W.2d 386. This decision of the Court of Appeals creates chaos in an area which requires certainty of real property for local governments which must by necessity rely on plats.

By making such an ambivalent pronouncement, the Court of Appeals decision has the unintended consequence to cause considerable mischief and invites the precise lack of certainty for which our recording statutes are designed to guard against.

> **It is hardly necessary to quote authorities to show the purpose and policy of the recording acts. It has been well said that the object of all registry laws is to impart information to parties dealing in property respecting its transfer and incumbrances (sic.), and thus to protect them from prior secret conveyances and liens. This court has said that the design of the recording laws is to prevent fraud in real estate transactions by securing certainty and publicity in such dealings, and that the recording laws are designed to give information in the most accurate, reliable, and permanent form.**

*Savidge v. Seager,* 175 Mich. 47, 51-52; 140 N.W. 951 (1913).

1. Michigan's recording statutes make clear that an action which will result in the vacation, correction or revision of a platted and dedicated street requires adherence to LDA procedure.

Michigan, as a race-*notice* state, values and protects timely recorded interests in land. Pursuant to MCL 565.29:

> **Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. * * ***

The public policy supporting our State's race-notice statute was observed in *Drake v. McLean*, 47 Mich. 102, 104, 10 N.W. 126, 127 (1881) as follows:

> **Under the registry laws, where there are two conflicting conveyances, which are otherwise valid, the one which is first recorded has been declared by statute to be entitled to preference. Comp. Laws, § 4231 [now MCL 565.29]. No doubt reasons can be imagined why another rule might in many cases seem desirable, for the protection of purchasers. But it is for the legislature and not for the courts to determine the policy of the registry laws, and other reasons have been deemed sufficient to justify the present rule. In the absence of any statute the first granted would usually prevail, and our own law was undoubtedly designed to make it politic for all land purchasers to record their deeds without delay.**

While the long standing public policy of the State encourages the prompt recording of interests in land, the race-notice statute does not require the recording of interests in land, but simply affords protections to those who do timely record after acquiring such interest. *Crouse v. Mitchell*, 130 Mich 347, 358, 90 N.W. 32 (1902).

Herein, Plaintiff may choose to record its newly declared interest in the previously dedicated streets as depicted by the Plat of Harford Village, but **they are not obligated to do so**. Pursuant to MCL 600.2935, a party securing a judgment quieting title in land "**may**," but is not obligated, to record such judgment with the register of deeds office.

> **If the effect of a judgment is to quiet the title to lands, or if it in any way concerns the title to real estate, a certified copy thereof may be recorded in the office of the register of deeds of any county where said lands or any part of the same are situated.**

MCL 600.2935 (emphasis added). While this statutory provision allows a litigant to record a judgment quieting title in their favor, it is clear that a litigant is not obligated to do so. Accordingly, if the judgment of the trial court and decision of the Court of Appeals is permitted to stand in this matter, Plaintiff may not only escape providing the notice required under the

LDA when altering a recorded plat, but could conceivable choose to refrain from recording this judgment indefinitely.

When MCL 600.2935 is juxtaposed with the mandatory recording requirements found in the LDA at MCL 560.228, the indifference expressed by the Court of Appeals as to whether a litigant seeking to quiet title to dedicated public streets chooses to pursue only an adverse possession claim or chooses to raise such claim commensurate with LDA action, fully exposes the evils which may result here.

The LDA provides that

> **Within 30 days after entry of judgment, for vacation, correction, or revision of a plat, plaintiff shall record the judgment in the office of the register of deeds. The register of deeds shall place on the original plat the date, liber, and page of the record of the court's judgment.**

MCL 560.228 (emphasis added). When considering the importance of recording judgments that have the effect of vacating, correcting or revising a plat, and specifically public streets depicted in such a plat, it is clear that the decision to provide the world notice of such event should not rest solely on the whim of any particular litigant. Accordingly, the Court of Appeals erred when concluding that a claimant may choose to forgo the procedures of the LDA and secure for themselves a declaration of interests in dedicated streets which are expressly inconsistent with a recorded plat.

2. The Court of Appeals failed to distinguish between the vesting of an interest in land and the necessity of providing public notice of the declaration of such interests when they result in the vacation, correction or revision of platted and dedicated streets.

Plaintiff argued, and the Court of Appeals appears to have accepted, the premise that her interests in the platted streets may have already been "altered by operation of law under MCL

600.5801(4) and its associated doctrine of adverse possession." *Beach v. Lima Twp.*, 283 Mich App at 519, 770 N.W.2d 386. It must be remembered, however, that MCL 600.5801 is a statutory limitation on actions, precluding one who may hold title to land from maintaining an action for recovery of possession of the land when another has been disseised of the land for an enumerated time, here 15 years. This statutory provision is consistent with Michigan common law of adverse possession which, as recognized by the Court of Appeals, may be asserted as a "positive claim" by the one claiming a superior interest in land titled to another. *Beach v. Lima Twp.* 283 Mich App 504, 511, 770 N.W.2d 386 (2009), citing *Sanscrainte v. Torongo*, 87 Mich 69, 49 N.W. 497 (1891). What Plaintiff and the Court of Appeals appear to have overlooked, however, is that until such "positive claim" is made and proven by one asserting an adverse possession interest in lands, the titled ownership interests in dedicated streets depicted by the recorded plat, whether in fee or viewed as an irrevocable easement, remain *the* interest of record. Simply stated, until a circuit court has declared ownership in disputed lands to be something other than as depicted by the recorded plat, there is no recognized change in ownership or interest of such land, by "operation of law" or otherwise. MCL 600.2932.

Accordingly, while Plaintiff may claim events of over 100 years ago form the evidentiary basis upon which such declaration may now be made in this case, unless or until a circuit court finds the elements of adverse possession have been proven, no judicial change in the interests depicted in a recorded plat can be said to have occurred. This distinction is critical in this context because the declaration of title made by trial court in this matter does effectuate a *present day* change of interests delineated in the recorded plat, no matter the age of the evidence plaintiff may have used to secure such declaration. Because this is a *present* altering or changing of the

recorded plat, it is imperative that the protections afforded to all presently interested parties be heard in the context afforded such interests by the strict procedure of the LDA.

In support of its statement, that Plaintiff's interests in the platted streets may have already been "altered by operation of law" the Court of Appeals cites to *Gorte v. Dep't of Transportation*, 202 Mich App 161, 168 – 169; 50 N.W.2d 797 (1993). In *Gorte*, the Court of Appeals was asked to determine whether the 1988 amendment of MCL 600.5821, which revised the statute of limitations applicable to claims of adverse possession of state owned land was retroactive or prospective in application. *Id.* Critical to the court's holding in *Gorte* was when an interest in land vests. The Court determined as follows:

> **We . . . interpret § 5821, as amended, to preclude the running of the period of limitation against the state for purposes of adverse possession after the effective date of the statute. We further interpret § 5821 as inapplicable where applying the statute would abrogate or impair vested rights.**

*Gorte v. Department of Transp.*, 202 Mich App at 168; 507 N.W.2d 797 (1993). The *Gorte* then concluded as follows:

> **Thus, we conclude that if plaintiffs met all elements for adverse possession for a period of fifteen years preceding the effective date of the amended statute, plaintiffs' failure to earlier assert the claim in a legal action does not preclude them from now asserting title by virtue of adverse possession.**

*Gorte, supra* at 169 (emphasis added). As is clear from *Gorte*, a party with even vested property rights must still assert them. The issue for this Court's consideration is in what context must a claimed vested interest in land be asserted when that claimed interest will have the effect of vacating dedicated and platted streets. The lands at issue in *Gorte* did not involve platted and dedicated streets, but rather 20 acres of "paddocks, outbuildings, a horse training track and a portion of a lake." *Gorte, supra* at 162.

What is clear from *Gorte*, however, is that the adverse possession claimant must still "assert" its claim of superior title for the same to be recognized. Moreover, importantly absent from the *Gorte* decision was any reference to land being acquired "by operation of law," as attributed to such holding by the Court of Appeals here. *Beach, supra* at 519. The Court of Appeals appears to have read *Gorte* too broadly and standing for a proposition which *Gorte* itself was not prepared to make. A party claiming adverse possession can have no judicially recognized interest superior to another until it is asserted and recognized. While this proposition may appear overly simplistic, it is nevertheless a necessary distinction to make in this context where the adverse possession claimant is "now asserting" such claim, but attempting to do so without the inviting those statutorily protected interests which the LDA requires be named in any proceeding where claimed interests contrary to a recorded plat are to be determined.

In this context, the Court of Appeals statement that "LDA does not provide an avenue for the circuit court to alter substantive property rights," but "rather, the alteration of the plat in a LDA judgment is ordered so that the plat accurately reflects and conforms to property interests and rights already in existence" may still hold. *Beach, supra* at 517 – 518. What does not hold, however, is the Court of Appeals final pronouncement that in an adverse possession claimant, seeking judicial recognition of vested property rights that the LDA may or may not be followed at the discretion of the claimant.

3. The *Martin v. Beldean* and *Tomecek v. Bavas,* decisions should be read as requiring Plaintiff to assert her adverse possession claim in the context of a LDA action when such claim would result in the vacation, correction or revision of platted and dedicated streets.

The Court of Appeals announced six (6) principles "gleaned" from this Court's previous discussion of LDA actions in *Martin v Beldean*, 469 Mich 541; 677 NW2d 312 and *Tomecek v Bavas,* 482 Mich 484; 759 NW 2d 178 (2008).

> **(1) the LDA itself does not provide an avenue for the circuit court to alter substantive property rights or to establish such rights if they are not already in existence; (2) the alteration of a plat in a judgment entered by a circuit court pursuant to the LDA does not effectuate a change in substantive property interests and rights; (3) rather, the alteration of the plat in an LDA judgment is ordered so that the plat accurately reflects and conforms to property interests and rights already in existence; (4) the filing of an action under the LDA is the exclusive means available when seeking to vacate, correct, or revise dedication language in a recorded plat in order to achieve consistency between the plat and existing substantive property rights; (5) an LDA action will generally require the court to identify the nature, character, and scope of existing property rights and, at times, to resolve any underlying disputes on such issues so that the plat map can be properly revised if necessary; and (6) akin to quieting title, resolution of underlying disputes regarding the nature, character, and scope of existing property rights that could potentially lead to plat revisions may be undertaken in the context of an LDA action, *but it is not mandatory.***

*Beach v. Lima Twp.*, 283 Mich App 504, 517-518; 770 N.W.2d 386 (emphasis added). While the Court of Appeals appears to have captured the applicable guiding principles present in LDA actions, it is the last pronouncement, concluding that a LDA action "**is not mandatory**" when seeking to extinguish the interests in a dedicated and platted street which was error and requires reversal.

In *Martin v Beldean,* 469 Mich 541; 677 NW2d 312, this Court reversed a decision of the Court of Appeals which allowed a quiet title action to proceed independent of a LDA action. This Court held as follows:

> **Further, we agree with defendants that plaintiffs, who ultimately were seeking to have the plat conveyance of out lot. A declared "null and void" were required to file their claim under MCL 560.221 *et seq.* Allowing this action to proceed as one to quiet title is contrary to the**

> **statutes, which not only outline the specific procedures to be followed and what must be pleaded, but also require that an extensive group of parties be served, including everyone owning property located within three hundred feet of the lands described in the petition, the municipality, the State Treasurer, the drain commissioner, the county road commissioners, affected public utilities, and, in certain instances, the directors of the Department of Transportation and the Department of Natural Resources. MCL 560.224a(1) . Thus, because plaintiffs were attempting to vacate, correct, or revise the plat, we find that the trial court erred when it allowed this case to proceed as a quiet title cause of action.**

*Martin v. Beldean, supra* at 550-551. No reading of the *Martin* decision can be said to support the Court of Appeals conclusion here that an adverse possession claimant *may* elect to forgo provisions of the LDA when seeking to vacate, correct, or revise the depiction of dedicated public streets in recorded plat. To the contrary, *Martin* stands for the just the opposite proposition.

The Court of Appeals reasoned, however, that *Martin's* holding must be read in context of this Court's decision in *Tomecek v Bavas,* 482 Mich 484; 759 NW 2d 178**Error! Bookmark not defined.**. See, *Beach v. Lima Twp.*, 283 Mich App at 516. In *Tomecek,* this Court was asked to review a Court of Appeals decision which affirmed a trial court's determination that one of two easements depicted in a 1975 plat as a "drive easement" also permitted use of the easement for utility purposes. *Tomecek, supra.* at 491. In affirming the Court of Appeals, this Court concluded that at the time the easements were created, in 1967 and *before* the recording of the plat, that,

> *** * * the original grantors intended the central and south easements to have the same scope: both road access for ingress and egress and utility access.**

*Tomecek, supra,* at 491. In this context, the *Tomecek* Court went on[2] to discuss the LDA's application to the plaintiffs' *third argument* in support of its claim that the easement at issue permitted more than just driveway use, namely that it could seek to amend a recorded plat to allow for such use as such use was consistent with the intent of the grantor and no reasonable objection could be offered. *Tomecek, supra* at 496, see also *Tomecek v. Bavas*, 276 Mich App 252, 258, 740 N.W.2d 323 (2007) (Plaintiffs' last argument in support of its claim of a utility easement was that the LDA entitled plaintiffs to petition the circuit court to "correct or revise the plat to provide for a utility easement.").

This Court observed in *Tomecek* as follows:

> **The LDA defines a plat as a map. A plat is a description of the physical property interests on a particular area of land. A map, by itself, is not a determination of substantive property interests. If one "revises" a map of the United States to show Michigan encompassing half of the country, it does not make it so. The LDA was never intended to enable a court to establish an otherwise nonexistent property right. Rather, the act allows a court to alter a plat to reflect property rights already in existence.**
>
> **In this case, the LDA did not create new substantive property rights when the circuit court altered the plat to reflect that the central easement encompasses utility access. This right existed with respect to the central easement since its inception, when the original grantors recorded the central easement intending it to include utilities. The trial court merely used the LDA as the tool to validate property rights that already existed.**

*Tomecek v. Bavas*, 482 Mich. at 496 (emphasis added).

First, it is readily apparent that this Court's decision in *Tomecek* did not concern an adverse possession claim by a litigant seeking to assert rights in land that differed from the plat.

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[2] As noted by the dissenting opinion of Justice Cavanagh, the discussion of the LDA was not necessary to affirm the trial court and Court of Appeals decision and was "irrelevant to the outcome of this case." *Tomecek, supra,* at 502, (Cavanagh concurring in part and dissenting in part).

Rather, this Court merely concluded that the scope of an easement, which happened to be referenced in a later recorded plat, was controlled by the intent of the grantor at the time the easement was created. *Id.* at 491. To the extent *Tomecek* did comment on the LDA, its specific observation that the LDA was used by the trial court to "validate property rights that already existed," is not necessarily inconsistent with prior decisions of this Court. See, *Martin v. Beldean, supra,* (where adverse possession claimant was required to assert its claimed existing ownership interests in the context of an LDA claim); and *Kraus v. Department of Commerce, supra.* (where adverse possession claimant properly moved under the LDA to vacate part of the applicable plats). *Id.* at 423. In both *Martin* and *Kraus*, however, proceeding under the provisions of the LDA was viewed as necessary when the effect of attempting to "validate" one's claimed vested property rights would be to amend or revise an existing plat. Accordingly, the Court of Appeals erred when it read *Tomecek* as expressing apparent indifference as to whether an LDA action was commenced by one seeking to assert prescriptive rights inconsistent with provisions of a recorded plat. *Tomecek, supra* at 518. *Tomecek* can and should be read as requiring Plaintiff to assert her adverse possession claim to dedicated streets in the context of a LDA action, where her claimed rights can then be asserted and possibly "validated," but only after all proper LDA procedures are followed and all interested parties are permitted to fully participate. *Tomecek v. Bavas*, 482 Mich. at 496.

### C. The awarding of title and exclusive possession to dedicated streets in a recorded plat to an adjoining lot owner by a mere adverse possession action, without requiring a commensurate action to vacate, correct, or revise such plat under the LDA, deprives municipalities the ability to undertake a myriad of public service obligations contemplated by the LDA and Michigan statutory law.

The Preamble to the Michigan Land Division Act (LDA) identifies a multitude of purposes for which municipalities have an obligation to adhere for the protection of the common welfare:

> **An act to regulate the division of land; to promote the public health, safety, and general welfare; to further the orderly layout and use of land; to require that the land be suitable for building sites and public improvements and that there be adequate drainage of the land; to provide for proper ingress and egress to lots and parcels; to promote proper surveying and monumenting of land subdivided and conveyed by accurate legal descriptions; to provide for the approvals to be obtained prior to the recording and filing of plats and other land divisions; to provide for the establishment of special assessment districts and for the imposition of special assessments to defray the cost of the operation and maintenance of retention basins for land within a final plat; to establish the procedure for vacating, correcting, and revising plats; to control residential building development within floodplain areas; to provide for reserving easements for utilities in vacated streets and alleys; to provide for the filing of amended plats; to provide for the making of assessors plats; to provide penalties for the violation of the provisions of this act; to repeal certain parts of this act on specific dates; and to repeal acts and parts of acts.**

1996 P.A No. 591 §1.

Municipalities are entrusted with the responsibility of providing often overlooked but basic and necessary community caretaking services. These municipal services and functions, in large part, require certainty as to the location, extent and control of platted streets within political subdivisions. If adverse possession claimants are permitted to forgo the notice and pleading requirements set forth in the LDA to secure the removal or vacation of publicly dedicated streets, the ability of municipalities to undertake and provide such services will be compromised.

1. Municipal planning and zoning will be guesswork if the Court of Appeals decision is not reversed.

From its inception, the platting of land has been recognized to serve not only the dedicator's interest, but the interests of the community as a whole. As observed by this Court in *Martin, supra,*

> **In the earliest days of this state, indeed, even before statehood, in order to allow townships to be subdivided into discrete areas containing, for example, residential lots, dedicated streets, alleys, parks, etc., plat legislation was enacted. After Michigan became a state in 1837 there were numerous statutes amending and revising the requirements for recording and changing plats over the years. Further, in 1873 Michigan began centrally maintaining a file of all plats with the State Treasurer so that interested individuals could inspect them and ascertain the rights and limitations of a given plat. That practice has continued to this day with over 66,000 subdivision plats on file that may be reviewed on a website maintained by the Department of Labor and Economic Growth.**

*Martin v. Beldean*, 469 Mich. at 543-544; 677 N.W.2d 312 (emphasis added).

Under the present provisions of the LDA, the "Director of the Department of Energy, Labor and Economic Growth shall maintain a permanent file of plats and the index shall contain all pertinent information necessary to facilitate reference." MCL 560.242 (emphasis added). Moreover, the Register of Deeds for each county is required "to maintain a permanent file of recorded plats." MCL 560.243(1). Unfortunately, if the decision of the Court of Appeals is allowed to stand, the "interest" in these permanently maintained records will be diminished if not altogether lost because our collective confidence in whether the "rights and limitations" depicted by a recorded plat will be undermined. Municipalities, as do other interested parties identified by the LDA, must necessarily rely on recorded plats to perform the functions entrusted to them. Once such function is the planning and zoning of lands within the municipality.

Under Michigan's Municipal Planning Enabling Act, municipalities may "adopt, amend, and implement a master plan." MCL 125.3807(1). This act provides further as follows:

**(2) The general purpose of a master plan is to guide and accomplish, in the planning jurisdiction and its environs, development that satisfies all of the following criteria:**

**(a) Is coordinated, adjusted, harmonious, efficient, and economical.**

**(b) Considers the character of the planning jurisdiction and its suitability for particular uses, judged in terms of such factors as trends in land and population development.**

**(c) Will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and general welfare.**

**(d) Includes, among other things, promotion of or adequate provision for 1 or more of the following:**

**(i) A system of transportation to lessen congestion on streets.**
**(ii) Safety from fire and other dangers.**
**(iii) Light and air.**
**(iv) Healthful and convenient distribution of population.**
**(v) Good civic design and arrangement and wise and efficient expenditure of public funds.**
**(vi) Public utilities such as sewage disposal and water supply and other public improvements.**
**(vii) Recreation.**
**(viii) The use of resources in accordance with their character and adaptability.**

MCL 125.3807 (emphasis added).

**A master plan shall address land use and infrastructure issues and may project 20 years or more into the future. A master plan shall include maps, plats, charts, and descriptive, explanatory, and other related matter and shall show the planning commission's recommendations for the physical development of the planning jurisdiction.**

MCL 125.3833(1) (emphasis added).

The interconnectedness between municipal planning and the land platting process is probably best evidenced by the legislative mandate which provides that "**A plat approved by a municipality and recorded under section 172 of the land division act, 1967 PA 288, MCL**

**560.172, shall be considered to be an amendment to the master plan and a part thereof."** MCL 125.3871(7). Obviously, where, as here, an adverse possession claimant secures a circuit court judgment directing the vacation of publicly dedicated streets within a plat (that is *not* submitted to a municipality for approval and *not* recorded under section 172 of the LDA), such action can hardly be considered amendatory of a municipalities' master plan. However, while such action may not have the legal affect of amending a municipalities' master plan, there will be great risk of disconnect between what the municipality and public at large may come to expect of their master plan, based on recorded plats, when the plan is implemented.

The implementation of planning is authorized by provisions of the Michigan Zoning Enabling Act,

> **(1) A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.**

MCL 125.3202(1) (emphasis added).

Land use regulations, however, cannot be imposed in a vacuum. Rather, municipalities have an obligation to know about the land they are attempting to regulate. As observed in *City of North Muskegon v. Miller*, 249 Mich. 52, 57-58, 227 N.W. 743 (1929):

> **Zoning ordinances have been upheld by the United States Supreme Court in many instances, the leading case being that of *Village of Euclid v. Ambler Realty Co.*, 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303, 54 A. L. R. 1016. It is, however, necessary that a zoning ordinance be**

> **reasonable, and the reasonableness becomes the test of its legality. Any ordinance to be legal must be reasonable.**

*City of North Muskegon v. Miller*, 249 Mich. 52, 57-58, 227 N.W. 743 (1929)(emphasis added); see also, *Hitchman v. Oakland Tp.*, 329 Mich. 331, 335, 45 N.W.2d 306 (1951) ("arbitrary action or the unreasonable exercise of [zoning] authority may not be justified.") and *Frericks v. Highland Tp.*, 228 Mich App 575, 608, 579 N.W.2d 441 (1998) ("Zoning regulations are valid where there is a 'rational relation to the public health, safety, welfare and prosperity of the community' and where the regulations are 'not such an unreasonable exercise of [the police] power as to become arbitrary, destructive or confiscatory.'"). Moreover, even though municipal planners may contemplate "the probable future development of the community in establishing a zoning pattern," this must be done "in reasonable relationship to presently existing conditions." *Rottman v. Waterford Twp.* 13 Mich.App. 271, 276, 164 N.W.2d 409 (1968).

Just what constitutes reasonable zoning regulation can depend greatly on the rights of land owners within an affected area. As observed in *Janesick v. City of Detroit*, 337 Mich. 549, 554, 60 N.W.2d 452 (1953)(emphasis added):

> **It is to be conceded that the zoning of any city will result in so-called 'buffer' areas, but it does not follow that such lines of division can be arbitrarily drawn by the zoning authorities without regard to the existing characteristics of the area itself or without regard to the reasonable rights of the owners. In every case of hardship the rights of the general public must be weighed against the right of the individual landowner to use his property to the greatest advantage.**

Accordingly, for municipalities to make rational zoning decisions and avoid land use regulations that may be considered "unreasonable and confiscatory," it is imperative that municipal authorities have notice of just what those land interests are. Reliance, therefore on recorded plats is a critical first step in any rationally based zoning plan or administration. Obviously, therefore, municipalities must necessarily investigate the represented ownership and use of property when

making zoning and planning decisions. However, the affect of the Court of Appeals decision in this matter, which theoretically allows the secret vacating of publicly dedicated streets[3], could not only make the planning and zoning process guesswork, but could also expose municipalities to claims of arbitrary and unreasonable zoning action because zoning decisions will necessarily be based on unreliable and possible incorrect property ownership data. *City of North Muskegon, supra.*

2. The reliable provision of municipal services, including municipally approved utility services, may also be jeopardized if there is permitted to exist a procedure in Michigan to silently vacate dedicated streets and public right of ways.

Pursuant to the Michigan Constitution,

> **No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.**

MCL Const. Art. 7, § 29

The above constitutional provision has been interpreted to authorize a plethora of municipal regulation and services concerning publicly dedicated streets. *Robinson Tp. v. Board*

[3] It must be remembered, the basis Plaintiff named Defendant Lima Township was not as the political subdivision vested with control or supervision of the dedicated streets within the plat, but rather as "the owner of Lots 4, 5, 6, 7, 11, 12, 13, 14, Block 1, Village of Harford, Lima Township" which fronted the streets at issue. (Appellant's App. p.39a, ¶5 of Plaintiff's Complaint to Quiet Title). Accordingly, if a municipality does not happen to own lots adjacent to publicly dedicated streets in a particular plat, the decision by the Court of Appeals permits a change of publicly dedicated streets without necessity of notifying the municipality responsible for the dedicated streets.

*of County Road Com'rs of Ottawa County*, 114 Mich App 405, 414, 319 N.W.2d 589 (1982)("a township may regulate truck traffic within the township's boundaries"); *Kon v. City of Ann Arbor*, 41 Mich App 307, 309, 199 N.W.2d 874 (1972)("Plaintiffs [taxi operators] have no right to use the streets without the consent of the city."); *Highway Motorbus Co. v. City of Lansing*, 238 Mich 146, 147, 213 N.W. 79 (1927)(City of Lansing may "regulate the operation of interurban and suburban motorbuses within the limits of the city."); *Village of Jonesville v. Telephone Co.*, 155 Mich. 86, 118 N. W. 736 (1908)(affirming municipalities' regulation as to the location of telephone lines on certain public streets); *Michigan Towing Ass'n v. City of Detroit*, 370 Mich. 440, 454, 122 N.W.2d 709 (1963)(regulation as to time and place a common carrier towing company may operate on city streets upheld as reasonable control of use of streets); *Fostini v. City of Grand Rapids*, 348 Mich. 36, 42, 81 N.W.2d 393, (1957)(recognized "right of a city to establish a system of parking meters on its public streets").

Various statutes also entrust municipalities with various governing obligations that concern publicly dedicated streets. For instance, pursuant to MCL 691.1402a, a municipalities' general governmental immunity does not apply to potential tort liability arising from an injury caused by failing to maintain a highway, sidewalk, trail way, crosswalk or other installation in reasonable repair. Municipalities should not be uncertain as to the existence or location of such installations within their community. Moreover, the Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act entrusts to municipalities the review applications by telecommunication providers for access and use of public rights-of-way "to ensure and protect the health, safety, and welfare of the public." MCL 484.3115. Knowing just what public right-of-ways exist for telecommunication installation is obviously a prerequisite in any such application review.

In addition, municipalities are also entrusted to regulate the location of buildings or structures as they may encroach on public streets. These include streets that are platted but may not yet be extended or widened:

> *** * * the legislative body of any city or village may provide by ordinance that no permit shall be issued for, and no building or structure or part thereof shall be erected on any land located within the proposed future outside lines of any new, extended or widened street, avenue, place or other public way, or of any park, playground or other public grounds or extension thereof shown on any such certified and adopted plat.**

MCL 125.54 (emphasis added). Uniform regulation of such construction requires reliability in the plats depicting such public ways. Finally, municipalities are also entrusted with "**ascertain[ing] the taxable property in [their] assessing district.**" MCL 211.19. After ascertaining the existence of such property, which may no longer be clear based solely on referencing a recorded plat, assessors must then determine the true cash value for the property. In determining "the true cash value, the assessor shall . . . consider the advantages and disadvantages of location; . . . zoning; [and] existing use * * *. MCL 211.27. The reliability of recorded plats delineating that property which is to be assessed is obviously critical in the assessor's determination of these issues. These statutory and constitutional functions of municipalities are just a few of the many municipal concerns for which the mandatory joinder provisions of the LDA are designed to protect. MCL 560.224a(b).

## CONCLUSION

The Court of Appeals' decision is not only inconsistent with the clear and unambiguous requirements to the LDA, but has to potential to create unnecessary confusion as to the reliability of recorded plats where none need exist. Individual litigants, whose interests tend to be individually driven, should not be given the option of deciding whether to invoke mandatory LDA protections designed to protect interests in the greater community. Requiring such litigants follow the procedures provided by the LDA will not jeopardize their claim, but will simply ensure that that any declared rights they may have in dedicated public streets are shared with community at large. In only this way can the purposes of the LDA be honored and the interests of all concerned be protected.

## RELIEF SOUGHT

Michigan Municipal League, as joined by the Michigan Township Association and Public Corporation Section of the Michigan State Bar, respectfully request that this Honorable Court reverse the Court of Appeals' decision affirming the trial court's decision that this action could proceed without initiating proceedings under the LDA, and remand this matter with the requirement that any further proceedings must be consistent with the requirements of LDA.

Respectfully submitted,

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