STATE OF MICHIGAN

IN THE COURT OF APPEALS

JEFFREY K. HAYNES and KAREN M. HAYNES,

Plaintiffs/Counter-Defendants/Appellants,

-vs-

VILLAGE OF BEULAH, a Michigan municipal corporation,

Defendant/Counter-Plaintiff/Appellee.
_____/

Court of Appeals No. 317391

Lower Court Case No. 12-9517-CH

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# BRIEF *AMICUS CURIAE* OF THE PUBLIC CORPORATION LAW SECTION OF THE STATE BAR OF MICHIGAN AND THE MICHIGAN MUNICIPAL LEAGUE IN SUPPORT OF DEFENDANT/COUNTER-PLAINTIFF/APPELLEE VILLAGE OF BEULAH

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## STATEMENT OF THE BASIS OF JURISDICTION

*Amici* incorporate the Statement of Basis of Jurisdiction of the Appellee Village of Beulah.

## STATEMENT OF THE QUESTIONS PRESENTED

I. DOES MCL 247.190 APPLY TO THE VILLAGE STREETS AT ISSUE AND BAR PLAINTIFFS' CLAIM OF ACQUIESCENCE?

Plaintiffs/Counter-Defendants/Appellants answer: No
Defendant/Counter-Plaintiff/Appellee answers: Yes
The Trial Court answered: Yes
The Court of Appeals should answer: Yes
*Amici Curiae* MML and PCLS answer: Yes

II. SHOULD THE HOLDING OF *MASON V MENOMINEE,* ALLOWING A CLAIM OF ACQUIESCENCE IN PUBLIC PARKLAND, BE EXTENDED TO PUBLIC RIGHTS-OF-WAY, AS PROPOSED BY THE APPELLANTS, DESPITE THE FACT THAT *MASON* WAS INCORRECTLY DECIDED AND SHOULD BE CORRECTED BY THIS COURT?

Plaintiffs/Counter-Defendants/Appellants answer: Yes
Defendant/Counter-Plaintiff/Appellee would answer: No
The Trial Court did not reach the issue.
The Court of Appeals should answer: No
*Amici Curiae* MML and PCLS answer: No

## STATEMENT OF INTEREST

The Public Corporation Law Section is a voluntary membership section of the State Bar of Michigan, comprised of approximately 590 attorneys who generally represent the interests of government corporations, agencies, departments and boards, including townships, counties, villages, cities, schools and charter and special authorities. The Public Corporation Law Section of the State Bar of Michigan provides education, information and analysis about issues of concern through meetings, seminars, the State Bar of Michigan website, public service programs, and publication of *Public Corporation Law Quarterly*. Although membership in the Public Corporation Section is open to all members of the State Bar, the focus of the Section is centered on laws and procedures relating to public law and government corporations, agencies, departments and boards, including townships, counties, villages, cities, schools and charter or special authorities. The Section is committed to promoting the fair and just administration of public law. In furtherance of this purpose, the Public Corporation Law Section of the State Bar of Michigan participates in cases that are significant to governmental entities throughout the State of Michigan. The Public Corporation Law Section has filed numerous *Amicus Curiae* briefs before the appellate courts.

The Public Corporation Law Section Council, the decision-making body of the Section, is comprised of 21 members. The filing of this *Amicus Curiae* Brief was authorized at the November 9, 2013 regular meeting of the Council. Thirteen Council members were present at the meeting, and the motion passed on a vote of 12-0, with one abstention. No Council member opposed the filing. The position expressed in this *Amicus Curiae* Brief is that of the Public Corporation Law Section only and is not the position of the State Bar of Michigan.

The Michigan Municipal League (MML) is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of hundreds of Michigan cities and villages, many of which

are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a board of directors[1], which is broadly representative of its members. The purpose of the Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance.

The issues presented in this case—having to do with the potential loss of portions of public rights-of-way by virtue of an illegal encroachment by an adjacent property owner—have significant public interest to all municipalities in the State of Michigan. The extent to which a reversal of the trial court's reasoned opinion would affect municipalities throughout the state would be hard to overstate. There are no doubt countless encroachments of a similar nature and extent into the some 20,000 miles of city/village rights-of-way in Michigan. These communities have long understood and expected that such encroachments could ***not*** ripen into some claim of right or ownership, because that has been the hard and fast rule in Michigan for more than a century. While the adjacent property owners here rely heavily on this Court's decision in *Mason v Menominee*, 282 Mich App 525; 766 NW2d 888 (2009), that case does not apply here, because it did not involve public roads such as these. But *Mason* was incorrectly decided, in any event, and thus should not factor into this Court's decision for the reasons elaborated upon below.

[1] The 2013-2014 Board of Directors of the Legal Defense Fund are: Lori Grigg Bluhm, Chair, City Attorney, Troy; Clyde J. Robinson, Vice-Chair, City Attorney, Kalamazoo; Randall L. Brown, City Attorney, Portage; Eric D. Williams, City Attorney, Big Rapids; James O. Branson, City Attorney, Midland; James J. Murray, City Attorney, Boyne City and Petoskey; Robert J. Jamo, City Attorney, Menominee; John C. Schrier, City Attorney, Muskegon; Thomas R. Schultz, City Attorney, Farmington and Novi; Catherine M. Mich, City Attorney, Grand Rapids; Daniel P. Gilmartin, Executive Director and CEO of Michigan Municipal League; Jacqueline Noonan, Mayor, Utica, and President, Michigan Municipal League; and William C. Mathewson, General Counsel, Michigan Municipal League and Fund Administrator.

## INTRODUCTION

The Appellants in this case, the Hayneses, ask this Court to hold that a homeowner who puts railroad ties and a line of rocks within platted road rights-of-way—the exact width and location of which were easily discernible at the time and at all points thereafter by reference to documents on file at the Appellee Village and elsewhere—can claim ownership of that portion of the platted street under the doctrine of acquiescence. The Hayneses do not allege that they, or their predecessors, ever had a conversation with anyone at the Village about the location of the respective property lines. They never assert that any employee or officer of the Village actually thought that the railroad ties and/or rocks actually marked the edge of the platted right-of-way of either street. Nor do they deny that the placement of the encroachments in the rights-of-way was by Village Ordinance an illegal act—punishable by up to 90 days in jail—at the time it was done. Finally, the Hayneses' complaint lacks any assertion that any Village employee or official had the authority or ability to "acquiesce" in that ordinance violation, or to the change to the boundary line of the street, a fact that in and of itself should be enough to defeat an acquiescence claim on its face.

The trial court did not reach the merits of the Hayneses' acquiescence claim, however. The trial court instead granted the Village's Motion for Summary Disposition and dismissed the claim on the grounds that MCL 247.190, currently codified as part of the Highways Chapter of the Michigan Compiled Laws, barred an acquiescence claim to the streets at issue. MCL 247.190 states that all "public highways shall be and remain a highway of the width at which they were dedicated," and that "no encroachments by fences, buildings, or otherwise which may have been made since the . . . dedication . . . shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon."

The Hayneses assert on appeal that this section of the Highways Chapter does not apply to platted village streets or roads. *Amici* agree with the Appellee Village that, when read in

context and in *pari materia* with other relevant statutory provisions, the section clearly ***does*** apply. Initially adopted in 1925, it replaced several provisions of the 1909 General Highway Laws, and when read in the context of that act as subsequently codified, the term "public highway" for purposes of the Act plainly included streets and roads within a city or village, as several decisions of the appellate courts of this state have recognized.

Although the trial court did not reach the question whether the doctrine of acquiescence even applied as against a village street, because of its reliance on MCL 247.190, the Hayneses' Brief on Appeal spends a significant amount of time posturing their claim as simply a logical extension of this Court's decision in *Mason v City of Menominee*, *supra*, which held that acquiescence could apply to public lands (in that case, the property was part of a city park). Although this Court need not reach that question, because the trial court's ruling did not reach the "merits" of the actual claim of acquiescence, the idea pressed by the Hayneses that asserting acquiescence, or its close relative adverse possession, against a municipality with respect to a street (or a park or other public ground) is normal, or typical, or not unusual, demands a response.

When the *Mason* case was appealed to the Michigan Supreme Court (which denied leave to appeal on September 23, 2009), both the Public Corporation Law Section of the State Bar and the Michigan Municipal League Defense Fund filed an amicus brief on behalf of Menominee, arguing that acquiescence and adverse possession could not be asserted against a municipality. The argument relied on the relevant provisions of the Revised Judicature Act, MCL 600.5801 and MCL 600.5821, and not MCL 247.190, which is at issue in this case. This Court should find in the Village's favor on the applicability of MCL 247.190, but the Court should also be aware in reaching that conclusion that the primarily focus of the Hayneses' argument—that acquiescence can apply at all to these public streets, or to any public grounds—is incorrect, and this Court will need to revisit its decision in the *Mason* case at some point.

The implications of the Hayneses' arguments that they have acquired part of Lake Street and Commercial Street by acquiescence are staggering. They argue that the simple act of laying some railroad ties on the ground and placing a row of rocks in the right-of-way, coupled with the failure of the Village to remove those encroachments for a period of 15 years, took that land from the public and made it theirs. Yet what the Hayneses did is no different from what property owners all over the State of Michigan, in surely every municipality of any size and countless platted subdivisions, have done.

The reason why acquiescence or adverse possession cannot reasonably apply to public streets in particular was memorably articulated by the Missouri Supreme Court in *Laclede-Kristy Clay Products Co. v City of St. Louis*, 246 MO 446; 151 SW 460 (1912), a case decided at roughly the same time Michigan was re-writing and strengthening its highway laws:

> There are greater reasons why city streets should not be subject to destruction by nonuse or adverse possession than can be found applicable to any other kind of property. No other kind of public property is subject to more persistent and insidious attacks, or is less diligently guarded against seizure.

There are roughly 20,000 miles of local municipal (city/village) roads in Michigan.[2] The ruling that the Hayneses seek would not apply to just the streets in the Village of Beulah, or even just to villages. It would extend to every mile of local roads and streets in Michigan. Beulah might be small, but the Court can imagine how a city like Novi, with about 170 miles of local streets, or Farmington Hills (240 miles), or Grand Rapids (600 miles)[3] would fare when faced with such a change in the law affecting their rights-of-way.

What the Hayneses ask this Court to do is to put at risk an incalculable amount of that public right-of-way and to authorize a massive transfer of public property into the hands of trespassers through nothing more than the inattention of municipal employees or officials. For

[2] http://www.michiganhighways.org/introduction.html
[3] See Exhibit A.

a century the law has been clear that there is a distinction between public and private property when it comes to acquiescence and adverse possession. Both are so plainly contrary to the very concept of dedication and acceptance of public roads and the idea of a right-of-way, and this sort of argument is exactly what MCL 247.190, and §§ 600.5801 and 600.5821 of the Revised Judicature Act, were intended to protect the public against.

It is precisely because of provisions like MCL 247.190 and the construction of the Revised Judicature Act before the *Mason* decision that the Village of Beulah had, at the time of the alleged encroachments, ***no reason*** to think that the railroad ties or the line of rocks placed in its rights-of-way would have affected its title thereto in any way. No relevant statutes on this subject have changed to merit the fundamental shift in the law that these Appellants propose—only *Mason*, which should not be extended now to the most basic thing municipalities do: opening and maintaining public road systems.

## STATEMENT OF FACTS

*Amici* adopt the Statement of Facts as set forth in the Appellee Village's Brief of Appeal.

## STANDARD OF REVIEW

The trial court below granted summary disposition to the Village. A trial court's determination to grant summary disposition is reviewed by an appellate court *de novo*. Issues of statutory interpretation and other questions of law are reviewed *de novo*. *DEQ v Worth Twp*, 491 Mich 227, 237-238; 814 NW2d 646 (2012); *2000 Baum Family Trust v Babel,* 488 Mich 136, 143; 793 NW2d 633 (2010); *Eggleston v Bio–Med. Applications of Detroit, Inc.,* 468 Mich 29, 32, 658 N.W.2d 139 (2003).

## ARGUMENT

### I. MCL 247.190 DOES APPLY TO THE VILLAGE STREETS AT ISSUE AND BARS PLAINTIFFS' CLAIM OF ACQUIESCENCE.

MCL 247.190 states in full:

> ***All public highways for which the right of way has at any time been dedicated***, given or purchased, ***shall be and remain a highway of the width so dedicated***, given or purchased, ***and no encroachments*** by fences, buildings or otherwise ***which may have been made since the*** purchase, ***dedication*** or gift nor any encroachments which were within the limits of such right of way at the time of such purchase, dedication or gift, and no encroachments which may hereafter be made, ***shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon***. (Emphasis added.)

The Village's Brief on Appeal lays out the history of the dedication and acceptance of Lake Street and Commercial Street, and *Amici* cannot add to that discussion. The Village argues that the completion of the dedication process triggered the preclusive effect of MCL 247.190, and that the right-of-way is what it was at the time of dedication, regardless of any encroachment. *Amici* agree.

The Hayneses argue in response that the provision does not apply to the streets at issue for three reasons: (1) because the term "public highways" does not include platted village streets; (2) because construing the term "public highways" to include streets would violate the statutory construction rule about not rendering words "surplusage" in those instances where both the term "public highway" and "streets" are used in the same statutory provision; and (3) because MCL 247.190 applies only to adverse possession claims. None of these arguments is sufficient to rebut the clear language of the statute and its interpretation and application over the years.

MCL 247.190 was originally enacted as Section 20 of Public Act 368 of 1925. (See Exhibit B.) Section 21 of that Act was a "repealer" clause. It repealed "Chapter Seven of Act

Number Two Hundred Eighty Three of the Public Acts of Nineteen Hundred Nine, being Sections Four Thousand Four Hundred One to Four Thousand Four Hundred Fourteen, both inclusive of the Compiled Laws of Nineteen Hundred Fifteen. . . ."

The repealed provisions recited in Public Act 368 were part of a much longer act, Public Act 283 of 1909, a comprehensive set of provisions that were either assembled from existing laws or drafted so as to "revise, consolidate and add to the laws relating to the establishment, opening, improvement, maintenance and use of the public highways and private roads . . .," among other things. Section 1 of the 1909 Act confirms its broad scope:

> Public highways and private roads may be established, open, improved and maintained within this state under the provisions of this Act, and the counties, townships, cities, ***villages*** and districts of the state shall possess the authority herein prescribed for the building, repairing, and preservation of bridges and culverts, the draining of highways, the cutting of weeds and brush and the improvement of highways and the duties of state, county, township, city, ***village*** and district highway officials as defined in this Act. (Emphasis added.)

The 1909 Act, then, was a general highway law. Chapter 1 of the 1909 Act related to the laying out, altering, and discontinuing of highways. Section 20 of Chapter 1 defined public highways as follows:

> ***All highways regularly established in pursuance of existing laws***, all the roads that shall have been used as such for ten years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or may hereafter be laid out and not recorded, and which shall have been used eight years or more, ***shall be deemed public highways, subject to be altered or discontinued according to the provisions of this Act***. All highways that are or may become such by time and use shall be four rods in width, and where they are situated on section or quarter section lines, such lines shall be the center of such roads, and the land belonging to such roads shall be two rods in width on each side of such lines. (Emphasis added.)

This definition is not, by its terms, limited to township, county, or state roads; it is inclusive and broad in scope and does not clearly exclude city or village streets.

As originally enacted, Chapter 7 of the 1909 Act was entitled "The Obstruction of Highways and Encroachments Thereon." It contained eleven sections with similar provisions to those later included in Public Act 368 of 1925—including Section 7, which stated a specific requirement that a right-of-way dedicated at 66 feet shall remain 66 feet in width, and was not subject to encroachment. (See Exhibit C.) That provision, along with the entire Chapter 7 of the 1909 Act, is what was ***replaced by*** the provisions of Act 368 of 1925, including the language that eventually became MCL 247.190:

> All public highways for which the right of way has at any time been dedicated, given or purchased, shall be and remain a highway of the width so dedicated, given or purchased, and no encroachments by fences, buildings or otherwise which may have been made since the purchase, dedication or gift nor any encroachments which were within the limits of such right of way at the time of such purchase, dedication or gift, and no encroachments which may hereafter be made, shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon.

So, as initially enacted, the provisions of the 1909 Act relating to obstructions and encroachments used the term "public highways" in the context of the very same law expressly defining that term. When the revised language of the 1925 Act was introduced, it too was clearly made part of that same general highway law that included the broad definition of "public highway," which had remained unchanged. The 1929 Codified Laws continued the broad definition of "public highway" in Chapter 1 of the General Highway Law, §3936, and placed the unaltered provisions of Public Act 368 of 1925 in Chapter 6 of that same law. (See Exhibit D.)

The Court must take notice of, and give effect to, the fact that these provisions—at the time they were being written—were all part of one general highway law. The goal when construing any statutory provision is to ascertain the Legislature's intent. *Robinson v City of Lansing,* 486 Mich 1, 15; 782 NW2d 171 (2010). To determine that intent, statutory provisions are not to be read in isolation, but rather are to be read together to harmonize their meaning

and give effect to the act as whole. *Id.* at 15. "[W]ords and phrases used in an act should be read in context with the entire act and assigned such meanings as to harmonize with the act as a whole." *People v Couzens,* 480 Mich 240, 249, 747 NW2d 849 (2008) (quotation marks and citation omitted).

The broad meaning of the term "public highway" when the general highway laws were being written and/or codified (1909, 1925, and 1929) can be confirmed by reference to the accepted general meaning of that term at that time. The Village has properly cited *Burdick v Harbor Springs Lumber Company*, 167 Mich 673; 133 NW 822 (1911), for its proposition that the term "highway" is a "generic name for all kinds of public ways, including … streets … In short, every public thoroughfare is a highway." *Burdick's* understanding was confirmed by the Supreme Court in the subsequent case of *In Re Petition of Carson*, 362 Mich 409, 412; 107 NW2d 902 (1961), at exactly the time the Hayneses now argue that the encroachments or obstructions were likely to have been placed in the road rights-of-way (the 1950s/1960s). See also, *Johnson v City of Saginaw*, 368 Mich 502, 505; 118 NW2d 310 (1962), citing both *Burdick* and *In Re Petition of Carson* to reach the conclusion that the terms "public highway" included a city street.

The definition of "public highway" in Section 20 of the 1909 Act is not significant only because it gives a broad scope to the prohibition on encroachments into such highways ripening into right or title in what ultimately became MCL 247.190. Section 20 of the 1909 Act is also important because it supplies the basis for the concept of what is now referred to as the "highway-by-user" doctrine. That doctrine says that if the public has been using a road as a public way for a period of time, it will become a public road of a specified width. Section 20 of the 1909 Act is the codified form of that rule, which *Amici* assert applied to ***all*** municipalities. That this highway-by user provision applies to city and village streets, and not just to what the Hayneses would characterize as highways within a township or county, has been decided and

settled by any number of cases, the most significant of which is probably the well-known Michigan Supreme Court case of *City of Kentwood v Estate of Sommersyke*, 458 Mich 642; 581 NW2d 670 (1998).

The highway-by-user analysis is also indirectly relevant here despite the formal dedication of the two streets at issue. In 1971, around the very time that the Hayneses argue that their predecessors had placed the encroachments in the streets, and thus very likely while the 15-year time period was still running, this Court decided *Sharkey v City of Petoskey*, 30 Mich App 640; 186 NW2d 744 (1971), which should be dispositive of this case. The street at issue was a municipal street (but not platted) that had been improved with pavement and utilities. The plaintiffs in *Sharkey* argued, as the Hayneses do here, that their placement of certain improvements within the right-of-way of the street (a lawn, a fence, and even a garage in one area) had given them rights over the affected area. This Court disagreed, citing MCL 247.190 and addressing the question whether the street was a "public highway" directly. The Court first determined that the dedication of the street to the City, and the City's acceptance of the dedication, had by law resulted in a street that was 66 feet (four rods) wide. It then held that MCL 247.190 directly applied to that city street to preclude a reduction in the dedicated width or any private right or title by way of encroachment.

The *Sharkey* case is then, for all intents and purposes, this case, with one exception—the dedication and acceptance here was "cleaner" by virtue of the formal platting of Lake and Commercial streets at their stated width. In *Sharkey*, the Court was required to first determine that width, and it is important to follow the approach it took. It cited *Chene v City of Detroit,* 262 Mich. 253, 258, 247 N.W. 172 (1933), as describing the "common law" dedication process. *Sharkey*, at 643. To find that the city street at issue in that case was a public street 66 feet wide, however, the *Chene* Court cited the highway-by-user language that is directly traceable back to Section 20 of the 1909 Act above:

The statute provides:

> "All highways * * * that shall have been used as such for ten (10) years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used eight (8) years or more, shall be deemed public highways. * * *" Comp. Laws 1929, § 3936.

Here the road had been laid out, its boundaries plainly indicated, and a 24-foot pavement built in the center, which had been used by the public for more than ten years. The statute clearly prevents the abutting property owners or the public authorities from now closing the street, except in the manner authorized by law.

The point of tracing that history is this: The prohibition against an encroachment ripening into some right in a "public highway," now codified at MCL 247.190, was part of the same 1909 general highway law that defined "public highway" very broadly to include ***any*** highway established by law as well as any highway-by-user. That definition was originally placed in Section 20 of the 1909 law, but ultimately came to be codified at MCL 221.20. That section—the highway-by-user section—has since been held by the Michigan Supreme Court in both *Chene* and *City of Kentwood* to apply to municipal streets. Thus, the broad definition of "public highway" now attached to the words of MCL 221.20 must necessarily also have been attached to those same words when they were part of the same 1909 general highway law that also housed Public Act 368 of 1925, which is now the anti-encroachment provision found in MCL 247.190.[4]

[4] Another example of then-contemporary legislation that used the term "public highway" in the context of the general highways law to apply broadly to include streets and roads is Public Act 341 of 1927. As codified in the general highways law in 1929, at §§ 3950 through 3955—that is, as part of Chapter 1 of the Act initially adopted in 1909 and containing the definition of public highway quoted above—§ 3950 stated:

> No ***public highway*** which borders upon, or is adjacent to any lake, or the general course of any stream or crosses any stream, nor any portion of such highway so bordering upon a lake or general course of any stream, ***shall be discontinued*** by the order or action of any official or officials or of any township, city or incorporated ***village*** of the state, until an order authorizing same shall have been made by the circuit court of the county in which such highway is situated in the manner as hereinafter provided. (Emphasis added.)

The Hayneses' alternative argument that construing the term "public highway" in MCL 247.190 to include "streets" or "roads" would violate statutory rules of construction against "surplusage" is an argument about distinctions that have no difference. They cite a number of statutory provisions, including several from the General Law Village Act, MCL 61.1, *et seq.* through 75.1, *et seq.*, that use both the term "highway" and the term "street" (or "road"). They then argue that the words must mean different things.

But that is not always or necessarily the case. The rule against construing words within any statute to be "surplusage" is intended to guard against a court ignoring a word, or failing to realize and apply a distinction between words. The rule is by its terms a general one, and it applies "if at all possible." *See, e.g., Pittsfield Twp v Washtenaw County,* 468 Mich 702, 714; 664 NW2d 193 (2003).

Here, the Legislature appears to have used similar words, or words effectively meaning the same thing, to convey an intent to cover an entire subject—to make clear, in other words, that any kind of thoroughfare is covered by the particular provision at issue. That does not render the additional words surplusage; rather, it makes the intent of the scope of the provisions cited as treating ***all*** forms of highways the same that much more obvious. As the Michigan Supreme Court stated in *People v Thompson*, 477 Mich 146, 153-154; 730 NW2d 708 (2007):

> We cannot define these terms in a manner that is inconsistent with how they are commonly understood just because they are separated by the word "or." In other words, the fact that these two terms are separated by the word "or" does not give us the authority to give these two terms distinct meanings when they are commonly understood to have the same meaning. If two words have the same meaning, then we must give them the same meaning even where they are separated by the word "or."

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As part of the general highway laws, the term "public highway" plainly included the streets or roads in a city or village.

*Burdick* and *In Re Petition of Carson,* as confirmed by *Johnson v Saginaw*, establish the common understanding in this case. Those cases say that it was "commonly understood" when the laws at issue were written that "public highway" in fact included city and village roads and streets. [5]

Finally, the Hayneses attempt to distinguish *Sharkey v City of Petoskey*, *supra*, because it involved a claim of adverse possession rather than acquiescence. This argument, too, makes a distinction without a difference. MCL 247.190 does not use the term "adverse possession." It talks about the width of the highway being and remaining the width dedicated, and states that encroachments of any kind shall not give "***any*** title or right to the land so encroached upon." That statutory language is broad enough to include both acquiescence and adverse possession, both of which are intended to vest title and right in the alleged possessor.

Recognizing the thinness of that argument, the Hayneses then argue that *Sharkey* is just wrongly decided. They fault this Court for assuming, without basis, that all streets are public highways, and for not citing any authority for that proposition. They ask this Court to ignore its prior decision in *Sharkey* because of this alleged lack of analysis.

For all of the reasons stated above, *Amici* agree with the Village that *Sharkey* was correctly decided, and that its precedential effect should not be ignored by this Court. But the Hayneses' position that a potentially dispositive case should be ignored as wrongly decided is ironic, since it is *Amici's* position that there is in fact a case that is deeply relevant to the Hayneses' entire claim that ***was*** wrongly decided, and that should be revisited by this Court. But that case is not *Sharkey*; rather, it is the main case on which the Hayneses rely: *Mason v Menominee, supra*.

[5] Nor does the Hayneses' argument do anything more than point out the ***use*** of different words. They do not allege, for example, that when the various statutes use the phrase "highway, street, and road," those are somehow treated differently. In each instance, the use of those similar words appears to be an attempt to clarify that ***all*** such rights-of-way of thoroughfares are subject to the same rule.

For the reasons discussed below, *Amici* suggest that in the absence of that incorrect decision in *Mason*, this unprecedented claim by the Hayneses would not likely be before this Court. *Amici* further suggest that unless and until this Court revisits the decision in *Mason* to correct it, vast amounts of public land will be at risk of transfer from the public trust to individuals or entities who occupy that public land without permission—or, as here, in violation of a criminal law. This works an unprecedented harm against the public interest. The basis for such a claim is a single paragraph—admittedly in a published opinion of this Court—that contains none of the analysis that should have been necessary to alter a century's worth of legislative policy and case law clearly establishing that the concepts of adverse possession and acquiescence do not apply against municipalities.

To extend that decision to the situation now before the Court, involving a platted public street, would result in a sea change in the law protecting public rights-of-way from encroachment, without there ever having been a change in a single relevant statute. The Court must ask itself—as municipalities around the state have asked following the *Mason* decision—how it has come to pass that the law could change for seemingly no reason. Or, stated otherwise, why was it clear for the last century or so that cases like this one could not be brought?

## II. THE HOLDING OF *MASON V MENOMINEE,* ALLOWING A CLAIM OF ACQUIESCENCE IN PUBLIC PARKLAND, SHOULD NOT BE TO EXTENDED PUBLIC RIGHTS-OF-WAY, AS PROPOSED BY THE APPELLANTS, BECAUSE *MASON* WAS INCORRECTLY DECIDED AND SHOULD BE CORRECTED BY THIS COURT, NOT EXTENDED.

The trial court below held that MCL 247.190 precluded the Hayneses' acquiescence claim and it was right. Yet, the Hayneses' Brief on Appeal contains a great deal of argument about the concept of acquiescence and the *Mason* case. Even if the issue has not been fully litigated yet below, the Hayneses' Brief begs response on the repeated assertion that *Mason* "requires applying acquiescence to [their] claim." Brief on Appeal, p. 10.

The irony of the Hayneses' position is that they are using a legal concept—acquiescence—that has as its underlying premise the notion that two abutting property owners have "peacefully" and by informal agreement determined to treat a different line than the correct and proper line between their parcels as a new property line. At the same time, they acknowledge the existence of a law, Village of Beulah Ordinance No. 18, "Protecting Public Streets and Public Places," that makes what the Hayneses' predecessors were alleged to have done in the 1950s/1960s a crime for which they could have been fined and/or imprisoned for up to 90 days in jail. (See Exhibit E.) Given that legal prohibition against the Village allowing the establishment of a new right-of-way line, the Hayneses' argument that it is "required" to apply here could not be more ill-considered.

**a) A municipality cannot acquiesce in the giving away of public land. It cannot do by accident or inattention that which it cannot do on purpose.**

The whole point of the doctrine of acquiescence is that there has been an accommodation reached that both parties are clear about and satisfied with. That is why acquiescence is easier to prove than adverse possession. While related, acquiescence and adverse possession are in some ways very different. As explained in *Warner v Noble*, 286 Mich 654, 662; 282 NW 855 (1938), ***adverse possession*** is the possession of someone else's property by a claim of right and with a certain degree of "hostility," meaning an intention to antagonistically dispute the right or title of another. ***Acquiescence***, on the other hand, requires no proof of hostility or any claim of right; it results instead from the parties peaceably agreeing that a particular line is the boundary between their properties. See generally, *Warner v Noble*, 286 Mich 654, 662; 282 NW2d 855 (1938). See also, *McQueen v Black*, 168 Mich App 641; 425 NW2d 203 (1988) and *Connelly v Buckingham*, 136 Mich App 462; 357 NW2d 70 (1984). The two causes of action even have different burdens of proof. A claim of adverse possession must be proven by clear and cogent evidence, while acquiescence must only be

established by a preponderance of the evidence; and also unlike adverse possession, no claim of right must be made or proven. *Killips v Mannisto*, 244 Mich App 256, 259; 624 NW2d 224 (2001).[6]

But this Court in *Walters v Snyder*, 225 Mich 219; 570 NW2d 301 (1997) (*Walters I*) explained that, as a result of these different standards for transferring title to property in order to show acquiescence, ***both*** parties must acquiesce in the treatment of a different property line as the "new" line. The problem with attempting to apply that concept to a municipality is that no one individual has the authority or ability to do the acquiescing or treating or agreeing necessary to make out an acquiescence claim. For example, who allegedly acted to approve a new property line here? Not the Village Council, which passed no ordinance or resolutions. And not the Village President, who executed no agreements.

It is no response to say that these individuals "allowed" the Hayneses and their predecessors to occupy the right-of-way. Municipalities are not estopped to deny the effectiveness of the unauthorized and illegal acts of its officers and employees. *Cross v Whedon*, 93 Mich App 13; 285 NW2d, 780 (1979), citing *Parker v Twp of West Bloomfield*, 60 Mich App 583, 592; 221 NW2d 424 (1975); *Blackman Twp v Koller*, 357 Mich 186; 98 NW2d

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[6] There are three distinct types or branches of acquiescence, although only the first and probably most common form of acquiescence—acquiescence for the statutory period of limitations—is relevant here:

> ***First***, there is acquiescence in a given boundary line for the prescriptive period. [The following cases seem to support this proposition: *Renwick v Noggle*, 247 Mich 150, 225 NW 535 (1929); *Dupont v Starring*, 42 Mich 492, 4 NW 190 (1880); *Wood v Denton*, 53 Mich App 435, 219 NW2d 798 (1974); *DeHollander v Holwerda Greenhouses*, 45 Mich App 564, 207 NW2d 187 (1973).] ***Second*** [is] that species of acquiescence where a bona fide controversy existed followed by agreement and acquiescence which need not continue for the statutory period. [*DeHollander*; *Moore v Ottawa Equip Co*], 26 Mich App 89; 181 NW2d 780 (1970); *Maes v Olmsted*, 247 Mich 180; 225 NW 583 (1929); *Hanlon v Ten Hove*, 235 Mich 227; 209 NW 169 (1926). . . . Somewhat less of an [*sic*] consensus exists as to the rationale underlying the ***third*** species of the acquiescence doctrine [the intent of the common grantor to effect the practical location of a boundary line]. Compare *Maes v Olmsted*, *supra*, and *Daley v Gruber*, 361 Mich 358; 104 NW2d 807 (1960), with [*Flynn v Glenney*], 51 Mich 580; 17 NW 65 (1883). . . . (Emphasis added.)

*McGee v Eriksen*, 151 Mich App 551, 558; 215 NW2d 571 (1974). See, also, *Pyne v Elliott*, 53 Mich App 419; 220 NW2d 54 (1974).

538 (1959); and *City of Highland Park v Oakland County Drain Comm'r*, 300 Mich 501; 2 NW2d 479 (1942). That is why the existence of Ordinance No. 18 is so crucial to this point—the Hayneses and their predecessors are deemed to have known that no one at the Village had the right or authority to acquiesce in ceding part the Village's right-of-way to them.

Similarly, municipal corporations themselves may not act beyond the scope of their powers. *Cross*, *supra*, at 19. "The Village" is not some amorphous thing. It is a legal entity—a municipal corporation—that operates under rules that govern its conduct. The General Law Village Act, MCL 61.1, *et seq.* through 75.1, *et seq.*, contains many of those rules, including for example, the requirement that *selling* land requires an ordinance approved by the Village Council, MCL 67.4; the requirement that parkland cannot be sold without a vote of the people, MCL 67.4; and the requirement that a public notice and hearing is required before any street or "public ground" can be vacated or discontinued, MCL 67.13. So, even if the Village had ***wanted*** to get rid of a portion of the roadway at issue, some specific requirements would have to have been met.

The Village is also, as a public entity, precluded from simply conferring a gift of property that it owns on a private citizen or resident of the Village. There is a general concept in the law that a municipality is prohibited from giving money or things of public value to private individuals without receiving something of specific value in return. See, e.g., *Skutt v City of Grand Rapids*, 275 Mich 258; 266 NW 344 (1936). 1963 Mich Const, art 10, §12, and art 8, §25. Any such act is considered *ultra vires* to the power of the municipality. *Kaplan v City of Huntington Woods*, 357 Mich 512; 99 NW2d 514 (1959).

While Michigan had never had an appellate decision on the issue of whether acquiescence applies to municipalities, until the *Mason* case, other states have. The following analysis, from a court writing at a time roughly contemporaneous with the time Michigan passed its statutes exempting public property from adverse possession, could just as easily

have been summarizing what was Michigan law, before *Mason*, on the "authority" of a municipality to "acquiesce" in something like giving away its public land before *Mason*:

> It is further contended by the appellant that, the road having been located upon the irregular line, as contended for by him, and having been used by the public for a long period of time, even if the same is not upon the true line, the said line has been acquiesced in, and cannot now be disputed.
>
> In *Quinn v Baage*, 138 Iowa 425, 114 NW 205, we said:
>
> > 'Manifestly, the doctrine of acquiescence can have no application to the fixing of a boundary between the abutting owner and the highway; ***for no one representing the public is authorized to enter into an agreement upon or to acquiesce in any particular location***.'
>
> In *Bidwell v McCuen*, 183 Iowa 633, 166 NW 369, we said:
>
> > 'There has been no acquiescence in the line upon the part of the public, as claimed by counsel for appellant, for the manifest reason that ***no one representing the public was authorized to enter into an agreement upon, or acquiescence in, any particular location thereof***.'
>
> The doctrine of acquiescence is held not to apply to highway-boundary disputes in which a governmental agency is a party. (*Emphasis added*.)

*Langle v Brauch*, 185 NW 28 (Iowa Sup, 1892).

Put simply, the Court of Appeals panel in *Mason* lost sight of the fact that what is at issue is ***public*** property. In the context of this case, the ordinance provision that prevents the encroachment could not be more clear. The Hayneses and their predecessors were prohibited from placing the encroachments that are now relied on. Such an ordinance benefits the Hayneses as much as it does everyone else in the Village—they drive or walk on all the other Village streets like everyone else; they make use of the improvements to the Village's right-of-way like everyone else.

But more than that, the ordinance here put them on notice that "the Village" was not actually treating—could not treat—the railroad ties or rock line as a boundary such that, if enough time passes, title will vest in them. The ordinance prohibits giving the Hayneses the property at issue; what other actual agreement sufficient to establish acquiescence can there be with that prohibition in place? The *Mason* case, as interpreted by the Hayneses, allows something to happen by oversight or error or inadvertence that the elected or appointed officials or employees of the Village ***could not have done on purpose***. That concept cannot and should not be extended to public road rights-of-way.

**b) An adjacent property owner cannot gain title to municipal property, including a right-of-way, by adverse possession or acquiescence, because the municipality never loses the right to come to court and seek recovery of that property. Because the 15-year statute of limitations does not apply to municipalities, it never "runs" against it, and a plaintiff in a quiet title case claiming municipal land by adverse possession or acquiescence can therefore never prove an essential element of those claims: the passage of the 15-year period and the vesting of title/right in them as opposed to the municipality.**

The Hayneses make a point of arguing that they "could have" sought title to the property at issue by way of adverse possession as well. No appellate court of this state has yet held that to be true, since *Mason* only discusses acquiescence. But an analysis of the history and operation of the laws regarding the application of the statute of limitations explains why that should not be true—and also explains why the *Mason* panel's decision on the related theory of acquiescence was incorrect and should be revisited.

Although the general or default limitations period for "recovery of land" is stated in MCL 600.5801(4) as 15 years, a separate provision of the RJA, MCL 600.5821(2), ***exempts*** municipal corporations from the passage of that limitations period:

> (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. (Emphasis added.)

The *Mason* panel held that this language in § 5821(2) meant that only if a municipality was a ***plaintiff*** in a case could it avoid the running of the statute of limitations. If it was the ***defendant*** in the case—that is, if the other party seeking its land "beat" the municipality to court—then the municipal property could be taken. *Mason, supra*, 528-529. *Amici* disagree—as does a century of case law. The practical effect of the above provision is to exempt municipal property from adverse possession or acquiescence claims ***even if the municipality is the defendant in a suit*** to quiet title brought by someone in possession of public land.

As further explained below, because the right of a municipality to file a lawsuit to re-enter and recover its property (by way of an action for ejectment, quiet title, or otherwise) is not subject to loss by the passage of time, the title to that property never automatically vests in the one seeking to assert adverse possession of it; i.e., never ripens into title. The municipality does not actually have to "bring" an action to recover its land. The mere fact that the municipality ***can*** at any time bring the action against someone in possession of its property, even after 15 years, defeats the very possibility of adverse possession of that property. *Pastorino v City of Detroit*, 182 Mich 5; 148 NW 231 (1914); *Gorte v Dep't of Transportation*, 202 Mich App 161, 168-169; 507 NW2d 797 (1993).

**(i) The mechanics of the statute of limitations as relates to adverse possession of municipal property.**

In order to properly explain the operation of §5801/§5821, a good understanding of the ***mechanics*** of adverse possession is needed. Adverse possession is a method of acquiring title to property by holding possession of it in a specified manner for a statutory period. In Michigan, the manner of possession must be open, notorious, exclusive, hostile, and under a claim of right. *Burns v Foster*, 348 Mich 8; 81 NW 2d 386 (1957); *Caywood v DNR*, 71 Mich App 322; 248 NW2d 253 (1976). Importantly—and this is part of the issue with the *Mason* Court's understanding of the way the concept works—the period of time that it must be held is

15 years not because that is derived ***directly*** from a statute on the subject of adverse possession, but rather by ***indirect*** reference to the statutory limitations period for the record title holder to come into court and "bring" an action to recover possession of his or her land. "Adverse possession is based on the fact of the running of the statute of limitations applicable to actions for the recovery of property. In other words, the doctrine of adverse possession ***is primarily an application of the defense of limitations of actions***." 3 Am Jur 2, Adverse Possession, §3, p 94.

In Michigan, the limitations period for an action to re-enter and/or recover land—and therefore the statutory period that a trespasser/adverse possessor must hold property—is established not in MCL 600.5821, the section addressed by the *Mason* panel, but in MCL 600.5801, which states in full:

> ***No person may bring or maintain any action for the recovery or possession of any lands or make any entry upon any lands unless***, after the claim or right to make the entry first accrued to himself or to someone through whom he claims, ***he commences the action or makes the entry within the periods of time prescribed by this section***.
>
> (1) When the defendant claims title to the land in question by or through some deed made upon the sale of the premises by an executor, administrator, guardian, or testamentary trustee; or by a sheriff or other property ministerial officer under the order, judgment, process, or decree of a court or legal tribunal of competent jurisdiction within this state, or by a sheriff upon a mortgage foreclosure sale the period of limitation is 5 years.
>
> (2) When the defendant claims title under some deed made by an officer of this state or of the United States who is authorized to make deeds upon the sale of lands for taxes assessed and levied within this state the period of limitation is 10 years.
>
> (3) When the defendant claims title through a devise in any will, the period of limitation is 15 years after the probate of the will in this state.
>
> (4) ***In all other cases under this section, the period of limitation is 15 years.*** (*Emphasis added.)*

In Michigan, as in most states, additional elements must be proven (actual, visible, open, notorious, exclusive, continuous, and uninterrupted possession under color or claim of right), but it is the possession for the statutory period that triggers the trespasser's right and destroys those of the record title holder. And therefore the passage of that 15 years is an element of any claim of title by adverse possession.

***A key and essential concept of adverse possession is that as soon as the statutory period ends the title vests in the adverse possessor/trespasser by operation of law.*** It is automatic, and no suit by the adverse possessor is actually required to "confirm" title. In *Gorte v Michigan Dep't of Transportation*, 202 Mich App at 168-169, the Court of Appeals confirmed that the divestiture of title is ***automatic*** upon the running of the period:

> Generally, the expiration of a period of limitation vests the rights of the claimant. [*People v Russo*, 439 Mich 584, 594; 487 NW2d 698 (1992).] It is further the general view with respect to adverse possession that, upon the expiration of the period of limitation, the party claiming adverse possession is vested with title to the land, and this title is good against the former owner and against third parties. . . . Defendant argues the contrary view, that plaintiffs' possession of the property merely gave plaintiffs the ability, before the amendment of §5821, to raise the expiration of the period of limitation as a defense to defendant's assertion of title.
>
> Contrary to defendant's arguments, however, Michigan courts have followed the general rule that the expiration of the period of limitation terminates the title of those who slept on their rights and vests title in the party claiming adverse possession. *Gardner v Gardner*, 257 Mich 172, 176; 241 NW2d 179 (1932). Thus, assuming all other elements have been established, one gains title by adverse possession when the period of limitation expires, ***not when an action regarding the title to the property is brought***. As further explained in 3 Am Jur 2d, Adverse Possession, §5, adverse possession "is based on the fact of running of the statute of limitations applicable to actions for the recovery of property, so it is primarily an application of the defense of limitations of actions. . . . An adverse possession statute creates a period of limitations on an action to quiet title that runs only against the record owner of the land; the adverse possessor is ***under no duty to quiet title by judicial action,***

> ***nor to vigorously assert his or her right at every opportunity***. (*Emphasis added*.)

Thus, by operation of MCL 600.5801, in Michigan as a general proposition a record title owner loses its right to re-enter and regain possession of land after 15 years. This, again, is key to understanding where the *Mason* panel went wrong: in Michigan, a municipality never loses the right to re-enter or regain possession.

**(ii) "Time does not pass against the sovereign."**

That was not always the case in Michigan. Under the common law dating back to the origins of the common law concepts of adverse possession and prescription, the rule was that they did not lie against the sovereign—*nullum tempus occurrit regi*: "time does not run against the king." See, generally, *Guaranty Trust Co v United States*, 304 US 126, 129; 58 SCt 785; 82 LEd 2d 1224; *City of Detroit v 19675 Hasse*, 258 Mich App 438; 671 NW2d 150 (2003).

Up until the early 20th Century, Michigan was actually an exception to that general common law rule, at least as related to adverse possession. It was not until 1907 that Michigan joined the majority of states by enacting legislation, PA 46 of 1907, directly providing that adverse possession was not applicable against public land: "no rights as against the public shall be acquired by any person . . . by reason of the occupation or use of any pubic highway, street or alley, or of any public grounds, or any part or portion thereof, in any township, village or city in this State, whether such occupation or use be adverse or otherwise."

As this Court explained shortly after the adoption of PA 46 of 1907, in *Pastorino v City of Detroit*, *supra*, at 10:

> [T]he great weight of authority in the United States is to the effect that title by prescription cannot be acquired against a city. The principle upon which this rule is founded is said to be that a city merely holds title to its streets and possession of them in trust for the general public, and has no authority to dispose of them or their use for other purposes, by lease, license, sale or gift. This is recognized as a general rule of law by most of the text-writers upon municipal corporations, and with due notice of and

deference to conflicting views in certain jurisdictions, it is well stated in *McQuillan on Mun. Corp*. vol. 3, §1396, as follows:

> There is much conflict in the decisions as to whether the right to a street or alley may be lost by adverse possession. In a few states such property is looked upon the same as any property held by an individual, and the maxim *'nullus tempus occurrit regis'* is considered not applicable to municipal corporations, so far as street and alleys are concerned, and hence title can be acquired to all or part of a street by adverse possession. However, the great weight of authority is to the contrary, and it is held in nearly all states that the rights of the public in a street or alley cannot be divested by adverse possession for the statutory period.

Seven states, including Michigan, are enumerated as holding, or having held, contrary to the general rule. ***Several of these states including Michigan have been brought into line with the general rule by subsequent legislation, following the decisions rendered by their courts holding otherwise***. (Emphasis added.)

In 1915, the Michigan legislature assembled the first Judicature Act, the predecessor of the current Revised Judicature Act, MCL 600.1, *et seq*. The relevant provisions of the 1915 act are contained in Chapter 9, Limitation of Actions (§12311):

> ***Hereafter no person shall bring or maintain any action for the recovery of any lands, or the possession thereof, or make any entry thereupon, unless such action is commenced or entry made within the time herein limited therefor***, after the right to make such entry or to bring such action shall have first accrued to the plaintiff, or to some person through whom he claims to-wit:
>
> 1. Within five years, where the defendant claims title to the land in question, by or through some deed made upon a sale thereof by an executor, administrator, guardian or testamentary trustee, or by a sheriff, or other proper ministerial officer, * * *;
> 2. Within ten years, where the defendant claims title under a deed made by some officer of this state, or of the United States, * * *;
> 3. Within fifteen years in all other cases: ***Provided, That the provisions of this section shall not apply to actions brought by any municipal corporation, for the***

> ***recovery of the possession of any public highway, street or alley, or any other public grounds***. (*Emphasis added*.)

This provision has not changed much since then. The 15-year period currently found in §5801(4) is stated in §3 above—which, significantly, also includes the statement that the limitation provisions of the section do not apply to actions brought by a municipal corporation for recovery of the listed public property; that "proviso" is now currently found in §5821(2).[7]

For many decades after the adoption of the 1907 act and 1915 Judicature Act, courts in Michigan understood and recognized that the exemption of municipalities from the running of the 15-year limitation period did in fact preclude the successful argument of adverse possession against a municipality, ***even in a suit for quiet title with the municipality as the defendant***. None of those cases read any kind of limitation on the application of the exemption depending on whether the municipal corporation was the plaintiff or the defendant in the suit.

In the most recent of these, *Adams Outdoor Advertising, Inc v Canton* Twp, 269 Mich App 365, 372-373; 711 NW2d 391 (2006), the Court of Appeals stated the matter in unequivocal terms:

> It is also undisputed that MCL 600.5821(2) precludes a party from claiming adverse possession against a municipal corporation.

*Adams* had a good historical and legal basis for saying that the matter was undisputed by other appellate decisions over the years:

*Rindone v Corey Community Church*, 355 Mich 311, 316; 55 NW2d 844 (1952):

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[7] The Compilers' Comment in the 1915 statute, on Page 4362, makes clear that the legislature's intent was to continue the 1907 rule against adverse possession of municipal land:

> It was formerly the rule that title could be acquired by adverse possession of property within the limits of a street—*Flynn v Detroit*, 93/500; citing *Big Rapids v Comstock*, 65/78; *Essexville v Emery*, 90/183; and in a public alley—*Vier v Detroit*, 100/616. See further, *Wyman v St. John's*, 100/571. But this rule was abolished by Act 46, 1907, ***reenacted in substance by subsection 3 of this section***. (*Emphasis added*.)

> "It is unnecessary in this case to determine the public rights in First Street north of Water, but we do note in passing the following: Prior to 1907 it might have been possible to acquire private rights in public streets by adverse possession. Since the enactment of PA 1907, No. 46 (see Cl. 1948, §609.1, Par. 3) [Stat. Ann. §27.593]), Michigan has been in line with the general rule which forbids the acquiring of such rights by prescription. The development of the law on this subject is presented in *Pastorino v City of Detroit*, 182 Mich 5 (Ann Cas 1916 D, 768)."
>
> *Engleman v City of Kalamazoo*, 229 Mich 603, 608; 201 NW2d 80 (1925):
> "Plaintiff succeeded in establishing prescriptive right against the city because '[t]he right was claimed for nearly 37 years prior to the passage of Act No. 46, Public Acts 1907 (3 Comp Laws 1915, §12311, Subd. 3). This period was sufficient to acquire the easement claimed."
>
> *Hawkins v Dillman*, 268 Mich 43, 489-490; 256 NW 492 (1934):
> "This possession…did not continue for a sufficient time to establish title by adverse possession prior to the enactment of Act No. 46 of Acts 1907, forbidding the acquisition of rights in public highways by adverse possession."
>
> *Olsen v Village of Grand Beach*, 282 Mich 364, 368-69; 276 NW 481 (1937):
> "[I]t appears that plaintiffs could acquire no rights in these platted streets except on the theory of having acquired such rights by adverse possession. The possibility of their making such a claim is foreclosed by statute. (3 Comp Laws 1929, §13964, Subd. 3.)"
>
> *Arduino v Detroit*, 249 Mich 382, 387; 228 NW 694 (1930):
> "Can the plaintiffs acquire title by adverse possession to Parcel B, which is designated on the plat as an alley and dedicated to the public? Since the enactment of Act No. 46, Pub. Acts 1907 (superseded by the Judicature Act, 3 Comp Laws 1915, §12311), it is not possible to obtain titled against a public by adverse possession."

Note the dates of these cases—all well after the codification in 1915, more or less in its current form.

Treatise writers expounding Michigan law took the same unequivocal view. *Michigan Real Property Law* (3rd Ed., 2005), §12.7, states:

> Any person adversely possessing the land of another may, after the required 15-year period, establish fee simple marketable record title to the property being possessed. Adverse possession may not be established ***against*** a municipal corporation for the recovery of any public highway, street, alley, or other public ground. MCL 600.5821(2). (*Emphasis added*.)

Similarly, 25 *Michigan Law & Practice*, Adverse Possession, §212, states: "The common law rule that a claim of adverse possession may give good title against a city is now limited by statute excepting public highways, streets, alleys, and other public ground that municipal corporations may own," citing MCL 600.5821.

**(iii) The *Mason* decision.**

So, for a good century before *Mason*, §5821(2) was seen to clearly apply—along with § 5801—to preclude the taking of municipal property by adverse possession (and therefor by statutory acquiescence) even when the municipality was the defendant. How, then, did the *Mason* panel end up changing that rule so drastically? The answer is that it did not address the fact that the failure of the 15 year ever to pass against the City in that case meant that the plaintiff-landowner never had the ability to prove that essential "element" of an adverse possession/acquiescence claim—and that this was true no matter who the plaintiff or defendant is.

Here is the Court's ***entire*** discussion of this profoundly important issue affecting all publicly-owned lands held by municipal corporations in Michigan:

> While subsection (1) applies to '[a]ctions for the recovery of any land where the state is a party,' subsection (2) applies to '[a]ctions brought by any municipal corporations.' It is evident from the language employed in subsection (1) that the Legislature could have made subsection (2) applicable in all cases, brought both by and against, a municipality. The Legislature, however, chose not to do so. Further, interpreting subsection (2) to apply to any case in which a municipality is a party would render the words "brought by" in subsection (2) nugatory. Finally, an acquiescence claim involves a limitations period. *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993). The term 'periods of limitations' in MCL 600.5821(2) renders that provision applicable to claims asserting acquiescence for the statutory period. Thus, because the language of MCL 600.5821(2) prevents a private landowner from acquiring property from a municipality by acquiescence only if the municipality brings an action to recover the property, it does not preclude plaintiffs' claim.

Put simply, the panel focused on only §5821(2), without reference to the other things it works with. It compounded that error by focusing on the ***wrong phrase*** in §5821(2).

The *Mason* panel cited the usual statutory construction cases for the proposition that the goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the legislature, *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004), and that where the intent of the legislature is "unambiguously conveyed, the statute speaks for itself and judicial construction is neither necessary nor permitted." *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). But courts must also read the language in question in the context of the ***statute as a whole***, and must also give statutes that relate to the same thing a similar interpretation. "Statutes *in pari materia* are statutes sharing a common purpose or relating to the same subject. They are construed together as one law, regardless of whether they contain any reference to one another." *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 312; 596 NW2d 591 (1999), citing *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998).

Here, both the majority opinion and the concurrence in *Mason* discussed the language in the provision indicating that the limitations period does not apply in actions "brought by" a municipal corporation. But both failed to note—in fact, both completely ignored—the more important language in §5821(2) that says that the provision relates to actions for "the ***recovery of*** the possession of any public highway, street, alley, or any other public ground...." Again, §5821(2) "modifies" §5801, which also only has to do with a plaintiff bringing "action for the ***recovery*** or possession of any lands or make any entry upon any lands..." and provides that it must be done within 15 years. In other words, it is no mistake that both §5801 and §5821(2) relate only to limitations on the ***bringing of*** an action; that is the point and nature of

a limitation of actions provision. It only applies to cut off the right of ***a plaintiff*** to bring a cause of action.[8]

As relates to the acquiescence claim in this case, the "statutory period" involved is the same 15-year limitations period for adverse possession claims set forth in MCL 600.5801(4). *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996). Thus, it is fair to say that this kind of acquiescence and the separate doctrine of adverse possession are rooted in the same statutory concepts—as the Court recognized in *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993):

> At the root of claims of title by adverse possession and the type of acquiescence plaintiffs claim is the statute of limitations on actions to recover possession of land. In most cases, an action for the recovery or possession of land must be brought within 15 years after the cause of action first accrues. MCL 600.5801; MSA 27A.5801. ***The law of acquiescence is concerned with a specific application of the statute of limitations as to adjoining property owners who are mistaken about where the line between their property is***. (Emphasis added.)

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[8] The majority opinion points out that the legislature could easily have done to §5821(2) what it did to §5821(1), when it was amended in 1988 to state that the statute of limitations does not apply "in any case in which the state is a party." It is true that the in the 1915 judicature act that created the predecessor of §5821(2) and exempted municipalities from the statute, the state was not similarly exempted. The 1988 act corrected that by providing that "Actions for the recovery of any land where the ***state*** is a party are not subject to the periods of limitations, or laches…."

The majority opinion makes the rhetorical point that "the legislature could have made subsection (2) [that is, §5821(2)] applicable in all cases, brought both by ***and against*** a municipality. The legislature, however, chose not to do so. (*Mason, supra*, at 529; *emphasis added*.)" This statement, rather than helping the Court of Appeals' conclusion, actually proves the point that it did not read §5821(2) in the larger context of §5801 and the common law.

Inserting the phrase "or against" before a "municipal corporation" would have done absolutely nothing to affect the ability of a municipal corporation to defend its own property in an adverse possession claim, ***because the property affected by the language insertion would not be the municipality's property***. This error by the *Mason* panel has to do, again, with glossing over the words "recovery of." If the municipality were a defendant in a claim brought by someone to "recover possession of" their property, the municipality would have to be the one ***claiming*** ownership of property by adverse possession. So, in addition to the indirect effect noted above, the fact that the exception only applies to municipalities has a very real effect compared to §5821(1): it makes private lands subject to adverse possession by ***municipalities***. *Jonkers v Summit Township*, 278 Mich 263; 747 NW 2d 901 (2008); *Bachus v Township of West Traverse*, 122 Mich App 557; 332 NW 2d 535 (1983).

So, a plaintiff seeking to quiet title in himself or herself on a theory of acquiescence must prove, as an ***element of the claim***, that the statute of limitations has passed as against the defendant record title holder, who can no longer sue to recover the land. If that time period has not passed—that is, if the record title holder still has the right to enter upon the property or to commence an action "for the recovery of" the property that is not barred by the statute of limitations—then that element of the plaintiff's acquiescence claim cannot be met and title will not be quieted in the plaintiff against the record title holding defendant.

The Court of Appeals in *Mason* should have found that the concept of "acquiescence for the statutory period" does not apply to municipal property for the same reason that adverse possession does not apply to municipalities: If the claim of the abutting landowner is "rooted in" (*Kipka, supra*, at 438) the passage of the 15-year statutory limitations period of MCL 600.5801(4), and if under MCL 600.5821(2) that 15-year period does not pass or expire as to a claim brought by a municipality, it necessarily follows that an element of the acquiescence claim—holding the possession until the point in time that the record title owner can no longer sue—cannot be satisfied as against a municipality because that time ***never lapses***.

**CONCLUSION AND RELIEF REQUESTED**

The Village's argument that MCL 247.190 applies to preclude the claim against its rights-of-way is undoubtedly correct. The Hayneses' argument that the provision is part of a set of laws that relate only to county, township, or state roads is contrary to both the language of the acts and laws at issue and with appellate decisions applying them. Regardless of where it is now in the state's codified laws, the history of that provision establishes that it was part of a set of general highway laws that plainly extended to city and village streets. This Court should therefore affirm the trial court's grant of summary disposition to the Village.

In reviewing the parties' arguments, however, the Court should be wary of the constant refrain in the Hayneses' brief that *Mason v Menominee* somehow "requires" the concept of

acquiescence to apply to their encroachments into a road right-of-way—that is, the idea that it would somehow be unusual for the Court to rule otherwise. *Mason* did not involve a public road right-of-way. It was also wrongly decided by the panel involved, and this Court will need to revisit that panel's very brief discussion of the issue given its potential scope and effect as more claims like the Hayneses' are made against public roads and other lands. With no change in the language of any statute, *Mason* changed a century of clearly-established law that plainly held that the concepts of acquiescence and adverse possession do not apply to municipalities. That ruling needs to be revisited by this Court to set the law back to its original position, not extended as contemplated by Appellants.

Respectfully submitted,

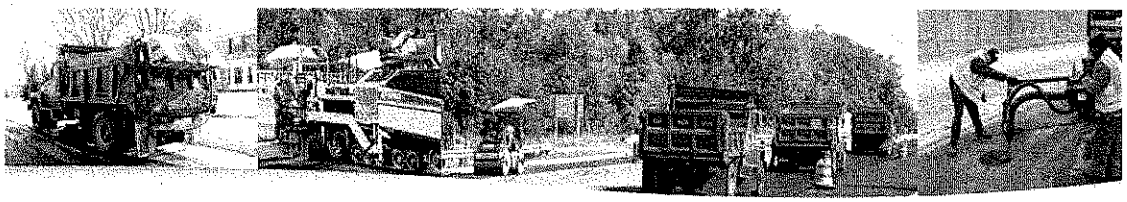
JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

/s/ Thomas R. Schultz

THOMAS R. SCHULTZ (P 42111)
Attorney for Attorney for *Amicus Curiae*
Michigan Municipal League and
Public Corporation Law Section
34405 West Twelve Mile Road, Suite 200
Farmington Hills, MI 48331-5627
(248) 489-4100

Dated: January 20, 2014

# EXHIBIT A





## Public Services

The Department of Public Services' mission is to provide quality services in the areas of infrastructure asset management, engineering, parks maintenance, forestry operations, and fleet maintenance. DPS is organized into three functional divisions: Field Operations, Water and Sewer, and Engineering:

26300 Lee BeGole Drive
Department Phone: 248-735-5640

Rob Hayes
Director of Public Services / City Engineer
248-735-5640

The Field Operations Division consists of the Roadway Asset Section, Fleet Maintenance Section, and the Parks Maintenance & Forestry Operations Section. The Roadway Asset Section is responsible for the reactive, routine and preventive maintenance of the City's roads and drains; and for the operation of the DPS sign shop. The City's vehicle and heavy equipment fleet is managed by the Fleet Asset Section, and all assets accept for Public Safety police and fire vehicles are maintained at the Field Services Complex. The Parks Maintenance & Forestry Operations Section is responsible for the reactive, routine and preventive maintenance of City parks; and for providing maintenance services for trees in City parks and along City roads and streets.

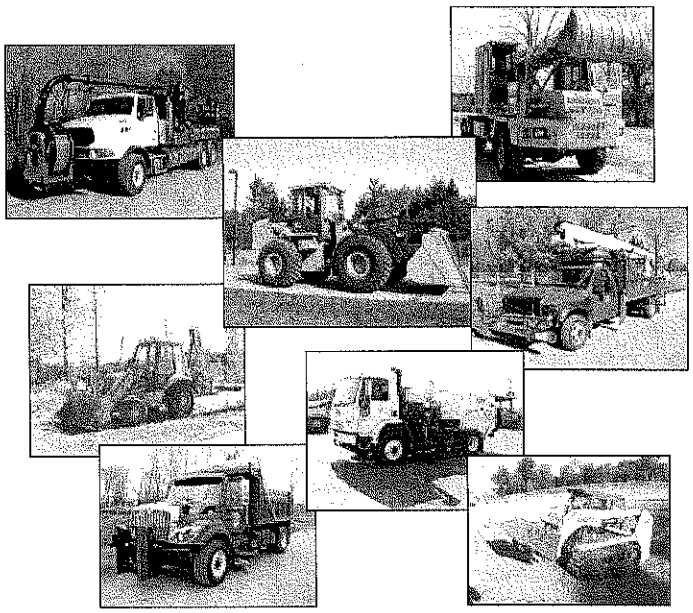
### Did You Know that DPS Maintains:

- 171 miles of major roads and neighborhood streets
- 2,108 traffic control signs
- 166 miles of sidewalks and multi-use pathways
- 4 major bridges
- 306 miles of water main pipe
- 4,003 fire hydrants
- 13,530 water service connections
- 243 miles of sanitary sewer main pipe
- 1,138 acres of park land in 11 parks
- 280 vehicles and major pieces of equipment in the City's fleet

The Water & Sewer Division is responsible for the management of the City's water distribution and sanitary sewage collection systems. Water & Sewer staff members operate, monitor and control water system pump stations, sanitary sewage lift stations, and meters. Maintenance activities include reactive, routine and preventive maintenance services that preserve the useful life of the City's water and sanitary sewer infrastructure.

The Engineering Division safeguards public health by planning, designing and constructing infrastructure that distributes clean drinking water, collects and disposes of sewage in a safe manner; and controls, collects and conveys storm water to abate erosion, mitigate flooding and prevent waterborne disease. The Engineering Division helps to protect public safety by providing safe and efficient roads, bridges and pathways.

The Public Services Director is Rob Hayes. He may be reached at 248-735-5640.

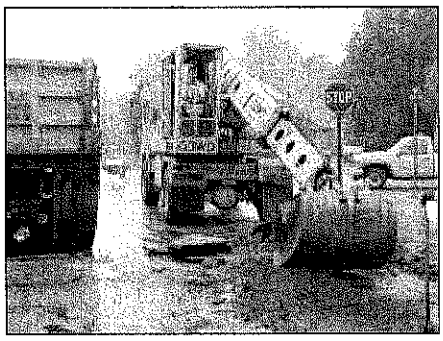


FARMINGTON HILLS Michigan




## Roads

View the Jurisdiction map to see who is responsible for this road



The Division of Public Works currently maintains a network of more than 58 miles of major streets and 243 miles of paved and unpaved local streets. Farmington Hills has the ninth largest municipal street network in the state of Michigan and the largest municipal network in Oakland County.

The DPW oversees all routine maintenance of the City's street system including pavement patching and replacement, road grading, litter control, street sweeping, roadside mowing and landscaping, forestry services, storm drain maintenance and improvements, ditching, guardrail repairs, sign maintenance, and snow and ice control. Additionally, City crews provide mowing and litter control services to 40 miles of county roads.

Ensuring safe driving conditions is the primary objective of the road maintenance program. Improving the aesthetic quality of the street network in the City of Farmington Hills is also a priority.

### Snow and Ice Removal

The City provides snow and ice control throughout the winter months for its 300-mile road network. These streets fall into one of three categories; major roads, school bus routes, and subdivision streets. Major roads and school bus routes receive the highest priority; they are plowed and salted following any accumulation of snow or ice. Local streets are plowed following accumulation of four inches or more of snow. If the accumulation is less than four inches, subdivision streets are spot salted, on hills, curves, and intersections. The DPW staff, in conjunction with Police dispatch, are on-call seven days a week to respond to road hazard conditions or storm events. These services are provided for all roads under the City's jurisdiction. Throughout Farmington Hills, however, there are roads under the jurisdiction of the Road Commission for Oakland County, the Michigan Department of Transportation, Wayne County, and our neighboring Cities of Southfield and Farmington.

#### School Bus Routes

The Farmington School District has selected the primary road link between the City's major street network and the district's elementary schools. These links

quick links...
Select

I'm looking for...
GO
advanced search...

new to Farmington Hills...
new resident info...

hills highlights...

- 2013/14 Adopted Budget Document
- Longwood Basin Retrofit Demonstration Project
- Water Tower Update 08/09/13
- Proposed Mix Use Ordinance for Orchard Lake Rd
- Citizen's Guide and Performance Dashboard

More hills highlights...

comprehensive document library...

city news...

- Rainbow Recognition Nomination Form
- Disney's "Camp Rock" Auditions Jan. 25 & 26
- Old-Time Barn Dance
- City to Host Community Conversation to "Set the Agenda for Michigan" on Feb. 3 at City Hall
- No Change in Garbage Pickup for Martin Luther King, Jr. Holiday on Jan. 20

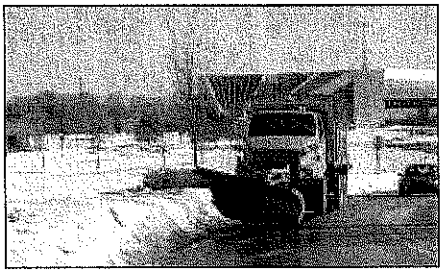
More city news...

comprehensive document library...

upcoming events...

are then designated as school bus routes. Note that these routes do not include all roads driven by school buses. School bus routes are plowed and/or salted following any accumulation of snow and ice.

**Sidewalks**



The City does not plow or salt sidewalks. Although requests for this service have been reviewed for years, the City has adopted a policy of not providing snow and ice control for the City's sidewalk network. Given the frequency of thaws in Southeastern Michigan, pedestrians can safely use sidewalks throughout most of the winter. Sidewalk snow removal programs in other communities have resulted in extensive landscape damages and, on occasion, caused increased hazards due to icy sidewalk surface conditions.

**Salt/Sand Barrels**

The City places 55-gallon drums filled with a mixture of sand and salt at intersections and hills upon request from homeowner groups. If your association is interested in having barrels placed within your subdivision, please send a letter, along with a clear description or sketch of the location, to the Division of Public Works at 27245 Halsted, Farmington Hills, Michigan, 48331, or email the DPW. It is important to obtain the approval of the property owner adjacent to the selected location, given that spilled salt may burn the grass.

Click here for a map of roadway jurisdictions in Farmington Hills.

**Other Roads**

There are a number of county and state roads that pass through Farmington Hills and are directly linked with the City's road network. County roads, as well as MDOT highways, are maintained throughout the winter months by the Road Commission for Oakland County maintenance staff. Like the Farmington Hills DPW, the Road Commission maintenance staff is on call 24 hours a day to respond to emergencies and weather.

1/16/14 Arts Commission Meeting
1/16/14 Planning Commission Meeting
1/17/14 Friday's Film (Senior Adult Division)
1/21/14 Henry Ford: His Life and Times (Senior Adult Division)
1/21/14 Commission on Energy & Environmental Sustainability Meeting
*More upcoming events...*

comprehensive event information...



City of Farmington Hills 31555 W. Eleven Mile Rd. Farmington Hills, MI 48336-1165
Phone (248) 871-2400 Hours of operation: Monday - Friday, 8:30AM - 4:30PM

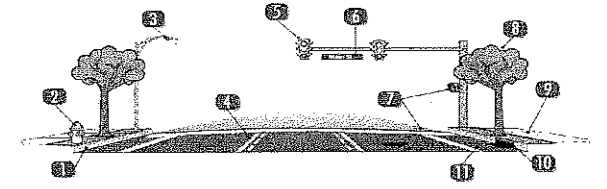
## Sustainable Streets Task Force

The Grand Rapids City Commission appointed 35 business, neighborhood and community leaders to the Sustainable Streets Task Force on February 7, 2012. The purpose of the Task Force is to identify solutions for the City's street crisis. There are nearly 600 miles of streets within the city's boundaries. Numerous other street related infrastructure assets that must also be addressed, include:

- 22 bridges
- 64 miles of alleys
- 1,134 miles of sidewalks
- 4,800 intersections
- 62,000+ trees
- 20,000+ street lights.

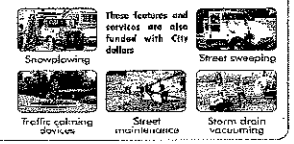
*The Sustainable Streets Task Force quickly observed that every failing city street is a substantial impediment to economic growth, and insuring a high quality of life for the citizens of Grand Rapids .*

### Complex Street System



**City funded street features**

1. Curbs, Gutters and Drive approaches
2. Fire hydrants
3. Street lighting
4. Pavement markings
5. Traffic signals
6. Signs
7. Pedestrian crossings
8. Forestry
9. Sidewalks
10. Storm Sewers and Catch basins
11. Bike lanes

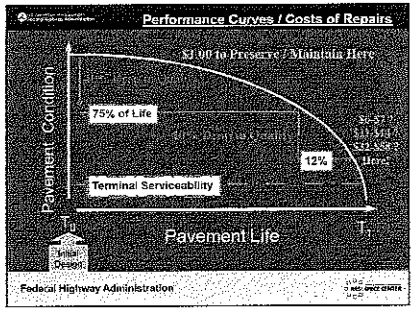



## Current funding sources not enough and may no longer be available

- The City's General Operating Fund subsidy for streets will be zero in Fiscal Year 2013, beginning July 1, 2012.
- Federal Funds: ARRA/Stimulus monies have been exhausted.
- State Funds: " Michigan Local Jobs Today" monies have been exhausted.
- Local Funds: All matching dollars for grants exhausted, all contingency dollars used FY2011 and FY2012, Combined Sewer Overflow (CSO) work 95% complete, declining water and sewer work
- State Gas Tax has been set at 19¢ since 1997 and the federal excise tax on gas has been set at 18.4¢ with no increase for several years.
- If the Governor's proposed Transportation Package passes, it could mean an additional $6M per year to the City, however, these monies still leave a budget shortfall.
- The City usually receives approximately $3M per year in grants that must be matched $1 for $1 from City sources. There are no matching funds in City coffers for streets going forward to stretch taxpayer dollars.

## Asset Management Must Be A Priority

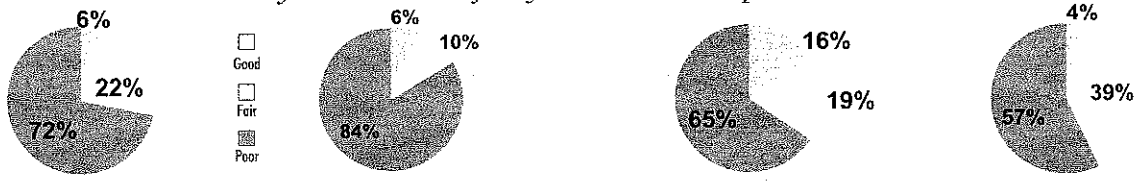
The Task Force recognized that a number of streets are unrecoverable and will require complete reconstruction – at a significant cost. Every $1 in maintenance saves $6 - $58 in future rehabilitation or reconstruction costs. Continuous investment to maintain the streets is necessary, Task Force members say, to save the public from greater costs in the future. Think of a street like a car. You need to change the oil on a regular basis; if you don't, you'll ruin the engine. Streets are the same way. If you don't fill the joints and fix the holes, eventually the entire street will need to be replaced.




## Additional Investment Needed

Deterioration of street conditions will accelerate if desperately needed preventative maintenance and investment does not occur. Just to obtain 50% streets in "good" condition, approximately $11 million must be invested each year for the next 15 years. To obtain 90% "good" condition, investment levels would approach $30 million per year for the next 15 years.

*Nearly two-thirds of city streets are in poor condition*




Principal Arterial Streets (35 total miles) | Collector Streets (48 total miles) | Minor Arterial Streets (74 total miles) | Local Streets (432 total miles)

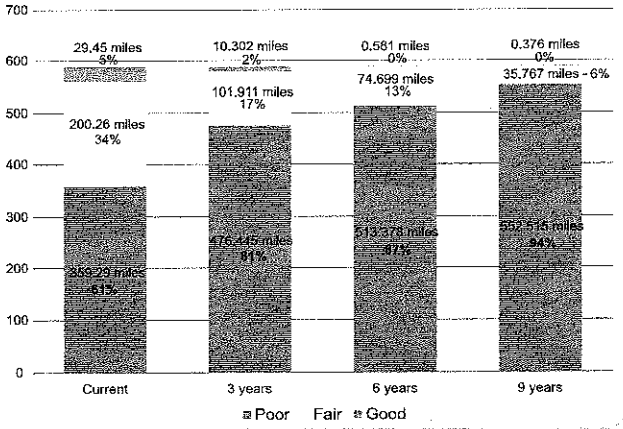
## Street Conditions

The Sustainable Streets Task Force findings show that nearly two-thirds of the city's 589 miles of streets are in poor condition; even more worrisome is that 72% of the city's Principal Arterials - busy corridors that carry long-distance traffic - are in poor condition.

Without additional investment, 81% of city streets will be in "poor" condition within the next 3 years.

The Task Force reports that other General Operating Fund (GOF) priorities have crowded out streets investment. After June 30, 2012 the GOF will discontinue any funding for streets capital investments. In the past, city general fund dollars matched 25% of annual gas and weight tax revenues from the State (Public Act 51). Money from grants will likely now be left on the table because funding to meet the required $1 for $1 match will not be met; equating to as much as a $3M loss per year.

Projected street condition will substantially worsen
(0-9 years with no new resources)



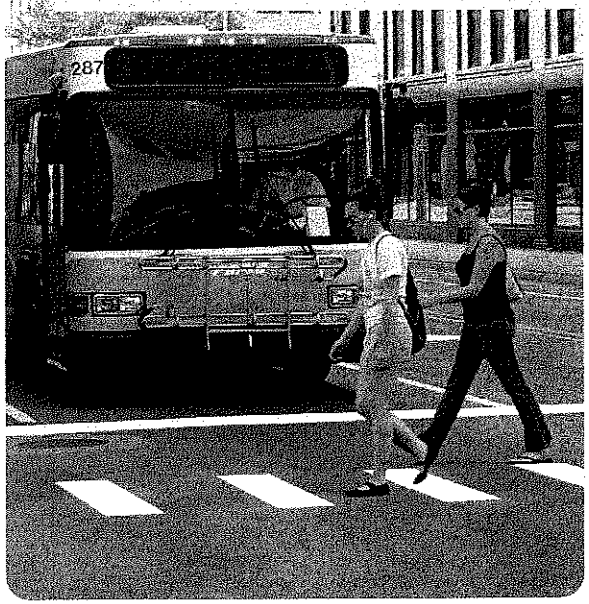
*A Complete Streets approach is an important component necessary for the city's economy.*

**Task Force Draft Vision for Grand Rapids' Streets**

"City streets and rights-of-way will be accessible, attractive, and safe; serving all people of our community, contributing to the livability of our neighborhoods and business districts, and increasing economic opportunity to individuals, businesses, and new development. Infrastructure assets will be maintained and well-managed, using a multi-faceted funding strategy and innovative approaches to preserve our investments."

"A Complete Street provides for the safety, comfort and convenience of all users whether you choose to walk, use public transportation, bike or drive. These streets need to be designed for all ages and abilities."

Jana Lynott, Senior Strategic Policy Advisor, AARP



## Task Force Schedule

**February-May 2012**
Task Force Research

**June 2012**
Community Input Gathered

**July-August 2012**
Review Alternatives

**September 2012**
Envision the Future State

**October-November 2012**
- Community Input Gathered
- Identify Resources

**November-December 2012**
Develop Implementation Plan, Schedule, and Metrics

**December-January 2012-13**
Inform Community of Findings

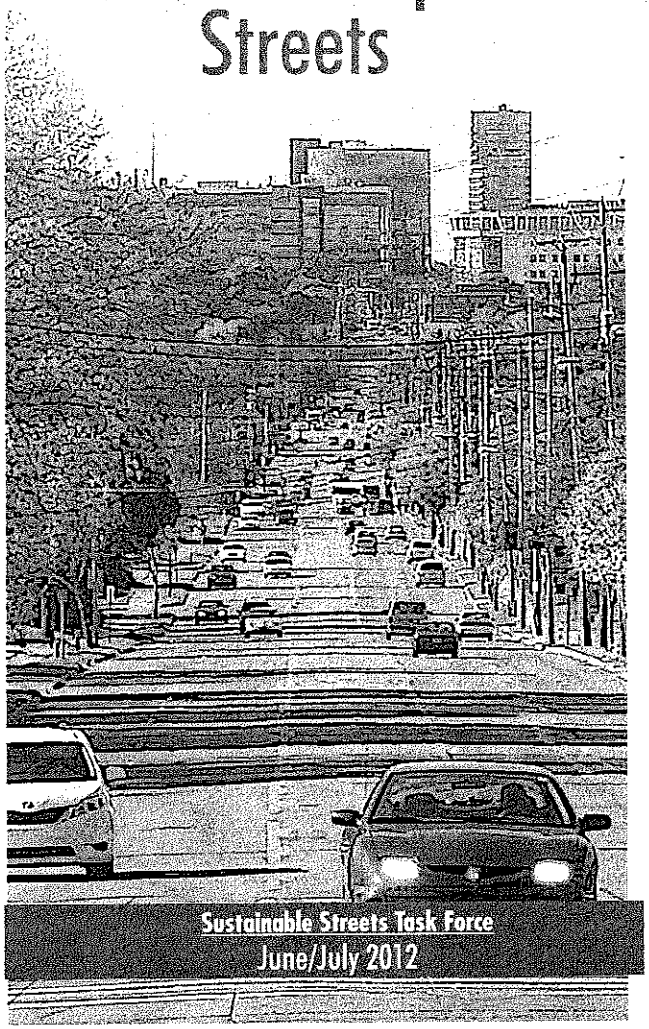
CITY OF GRAND RAPIDS


**Sustainable Streets Task Force**

300 Monroe Ave. NW
Grand Rapids, MI 49503
phone: 616-456-3318 fax: 616-456-3111
e-mail: nmeyer@grcity.us


*Join us on facebook*

# The State of Grand Rapids' Streets



Sustainable Streets Task Force
June/July 2012

# EXHIBIT B

[No. 368.]

AN ACT to prohibit obstructions and encroachments on public highways, to provide for the removal thereof, to prescribe the conditions under which telegraph, telephone, power and other public utility companies and municipalities may enter upon, construct and maintain telegraph, telephone or power lines, pipe lines, wires, cables, poles, conduits, sewers and like structures upon, over, across or under public roads, bridges, streets and waters and to provide penalties for the violation of this act.

*The People of the State of Michigan enact:*

Encroachment, order for removal.

SECTION 1. In every case where a public highway has been or shall be encroached upon by any fence, building, or other encroachment, the commissioner or commissioners having jurisdiction over the road may make an order under his or their hand requiring the owner or occupant of the land through or by which such highway runs, and of which such fence, building, or other encroachment forms a part of the enclosure, to remove such encroachment from such highway within thirty days. A copy of such order shall be served upon such owner or occupant, and every such order shall specify the width of the road, the nature of the encroachment and its location with relation to the center line of the road, and the township, section and fraction thereof in which it may be: *Provided,* The commissioner or commissioners having the matter in charge may issue temporary permits for fences for the protection of improvements on the adjacent land.

Service of.

Proviso.

When not removed by owner, etc.

SEC. 2. If such encroachment shall not be removed within thirty days after the service of a copy of such order, such owner or occupant shall forfeit the sum of one dollar for every day after the expiration of that time during which such encroachment shall continue unremoved, to be recovered in an action of trespass before any justice of the peace of the township, or of an adjoining township in the same county, and the commissioner or commissioners may proceed to remove such encroachment in such manner as to cause the least damage to the property or loss to the owner, and the person at fault shall be liable for the costs and expenses of such removal. The highway commissioner or commissioners shall keep an accurate account of the expenses incurred by him or them in carrying out the provisions hereof and shall present a full and complete statement thereof, verified by oath, together with a full and legal description of the lands entered upon, to the occupants of such lands, requiring the said occupant to pay the amount therein set forth; and in case such owner or occupant shall refuse or neglect to pay the same within thirty days after such notice and demand,

Account of expense kept.

the highway commissioner or commissioners shall present a duly verified copy of said statement to the township clerk of the township in which such expense was incurred, and thereupon the amount of all such costs and expenditures shall be certified to the supervisor and shall be assessed and levied on the lands described in the statement of the commissioner or commissioners, and shall be collected in the same manner as other taxes are collected, but no person shall be required to remove any fence under the provisions of this section between the first day of May and the first day of September unless such fence shall have been made within three months next before the making of the order for the removal thereof, or interferes with the construction, improvement or maintenance of the road.

4400(3)

Action of trespass, when commenced.

SEC. 3. If the person upon whom the copy of such order shall be served at any time before the expiration of said thirty days, by a written notice served upon the commissioner or commissioners, deny such encroachment either in whole or in part, or shall deny the existence of a highway where such encroachment is claimed to exist, the commissioner or commissioners, instead of proceeding to remove such encroachment, shall commence an action of trespass against the person upon whom the copy of such order was served, as hereinafter provided.

4400(4)

By whom brought.

SEC. 4. Such action shall be brought by the commissioner or commissioners in his or their name of office, claiming nominal damages only in the sum of six cents, before any justice of the peace of the township, or of any adjoining township in the same county. The summons in such action may be in the same form, and shall be issued and served, and a jury shall be impaneled when demanded, and all proceedings had as near as may be, as in cases of personal actions of trespass, and full costs shall be taxed by the justice and paid by the losing party, except that if the commissioner or commissioners demand a jury he or they shall not be required to advance the jury fee.

4400(5)

Trial.

SEC. 5. The declaration in such action shall follow the order required by section one of this chapter, in describing such encroachment. The defendant may plead denying the encroachment in whole or in part, and may also deny the existence of a highway where such encroachment is claimed to be, but otherwise the legal existence of the highway shall not be questioned on the trial, and the fact of such encroachment, and where the true line of the highway is, shall only be tried.

4400(6)

Verdict, what to specify.

SEC. 6. The trial of said action may be adjourned for not to exceed ten days. The jury shall specify in their verdict, if they find the defendant guilty of causing or maintaining the encroachment as charged, and the extent thereof, and if the existence of the highway has been denied, they shall also specify, if they find a highway to exist, whether it be such by public use or by having been regularly laid out

and established as a public highway. In the trial of any cause involving the existence of any highway, the burden of proof shall be upon the contestants to show that the same has not been regularly laid out and established as a public highway, or has not become such by public use.

4400 (7)

Appeals.

SEC. 7. Either party may appeal to the circuit court of the proper county in the same manner that appeals are taken from justices' courts in other cases, but in case of an appeal taken by the commissioner or commissioners, he or they shall not be required to pay the costs or furnish an appeal bond. In case of such appeal, trial shall be had on the issue joined in the justice court, and in case of a judgment in any court against the commissioner or commissioners no execution shall issue, but the judgment shall be certified to the proper supervisor and the amount thereof assessed and collected as in case of judgments against townships and counties.

4400 (8)

Removal.

SEC. 8. In all cases of final judgment against any person for causing or maintaining an encroachment, the commissioner or commissioners may proceed to remove the same within ten days after such judgment, in the same manner that he may do under section two of this chapter, where the encroachment or the existence of the highway is not denied, and the penalty prescribed in section two shall attach and continue from and after the expiration of the thirty days mentioned therein, until such encroachment be removed.

4400 (9)

Interference, etc., penalty for.

SEC. 9. In all cases of final judgment against any person or persons for causing or maintaining an encroachment or obstruction upon a highway, if such person shall, subsequent to such final judgment, by force or otherwise, interfere with any commissioner or commissioners in the performance of his or their duties under this chapter, or if such person shall replace or cause to be replaced any of the encroachments or obstructions which had been removed, or in any way interfere with the said highway, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court.

4400 (10)

Logs, etc., removal of.

SEC. 10. In case any saw logs, cordwood, or other loose obstruction shall be upon any highway, the commissioner or commissioners may notify the owner, if known, to remove the same within two days, and if not so removed, or the owner is unknown, the commissioner or commissioners may remove such obstruction to some convenient place, and if it has a value he or they shall hold it for thirty days subject to the order of the owner upon payment of the necessary expenses of removal, after which time he or they may sell the property removed, and such sale, notice of sale and application of the proceeds thereof shall be the same as is now required by law of constables' sale under execution, and the expense of removal, care of property and sale shall be deduct-

ed from the proceeds of sale, and the balance paid to the owner of such property, or deposited with the township clerk to be by him paid to the owner.

4400(11)

Compensation for removing.

SEC. 11. In case the article or thing have no value or is not of sufficient value to pay for the removal, the commissioner or commissioners shall be entitled to compensation for the expense of removing it, and the expense of removal may be recovered from the owner in the name of the commissioner or commissioners in an action of assumpsit, or the same may be assessed upon any property of such owner and collected in the same manner as is provided in section two hereof.

4400(12)

Fence, when unlawful to erect.

SEC. 12. It shall hereafter be unlawful for any person, firm or corporation to erect a fence along any road, of any material which, by reason of its construction or otherwise, is dangerous in itself or by reason of causing an obstruction to the highway. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifteen dollars, nor more than fifty dollars, or by imprisonment in the county jail for a period not exceeding thirty days or by both such fine and imprisonment in the discretion of the court.

Penalty.

4400(13)

Telegraph poles, etc., may erect.

SEC. 13. Telegraph, telephone, power and other public utility companies and municipalities are authorized to enter upon, construct and maintain telegraph, telephone or power lines, pipe lines, wires, cables, poles, conduits, sewers and like structures upon, over, across, or under any public road, bridge, street or public place and across or under any of the waters in this state, with all necessary erections and fixtures therefor: *Provided*, That every such telegraph, telephone, power and other public utility company and municipality, before any of the work of such construction and erection shall be commenced, shall first obtain the consent of the duly constituted authorities of the city, village, or township through or along which said lines and poles are to be constructed and erected.

Proviso, consent.

4400(14)

Who to give consent.

SEC. 14. In case it is proposed to construct a telegraph, telephone or power line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over or under a county road or bridge, the consent of the board of county road commissioners shall be obtained before the work of such construction shall be commenced; and in case it is proposed to construct a telegraph, telephone or power line, pipe line, wires, cables, poles, conduits, sewers or like structures, upon, over or under a state trunk line highway, or upon, over or under any bridge that the state has participated in constructing, the consent of the state highway commissioner shall be obtained before the work of such construction shall be commenced.

4400(15)

Trees, etc., not to be destroyed, etc.

SEC. 15. The construction and maintenance of all such telegraph, telephone and power lines, pipe lines, wires, cables, poles, conduits, sewers and like structures shall be subject to the paramount right of the public to use such public places, roads, bridges and waters, and shall not interfere with other public uses thereof and nothing herein contained shall be construed to authorize any telegraph, telephone, power or other public utility company or municipality to cut, destroy, or in anywise injure any tree or shrub planted within any highway right of way or along the margin thereof, or purposely left there for shade or ornament or to bridge across any of the waters of this state. Nor shall anything in this or the next two sections preceding be construed to grant any rights whatsoever to any public utilities whatsoever, nor to impair anywise any existing rights granted in accordance with the constitution or laws of this state, but shall be construed as a regulation of the exercise of all such rights.

4400(16)

Poles, etc., where placed.

SEC. 16. In no case shall any poles or other structures be placed above the ground or road grade between the curb or road shoulder lines, or closer than fifteen feet from the center line of the roadway; and in no case shall any wires, cables or other fixtures be placed, or be permitted to remain, at less height than fifteen feet above any part of the traveled portion of the road.

4400(17)

When removed.

SEC. 17. Any person or persons, firm, corporation or municipality violating any of the provisions of this chapter, shall, upon written demand of the commissioner or commissioners having jurisdiction over the road, remove such encroachments, pipe lines, wires, cables, poles, conduits, sewers and like structures. If removal be not made within thirty days thereafter, then the said commissioner or commissioners shall have the right to remove the same and the person, persons, firm or corporation or municipality so violating, shall be liable for the amount of expense incurred in making such removal, to be collected in an action of assumpsit, or assessed upon the property of such person, persons, firm or corporation and collected in the same manner as other taxes are assessed and collected.

4400(18)

Buildings, permit to move.

SEC. 18. No building, or other obstruction to traffic shall be moved across, upon or along any road without consent being first obtained from the commissioner or commissioners having jurisdiction over the road, and without first executing to such commissioner or commissioners, a bond in an amount sufficient to cover all possible damage to the road on account of such moving, to be determined by the commissioner or commissioners aforesaid, and conditioned for the payment of all such damage or injury to the road on account of such moving. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars or by imprisonment in the county

jail for not to exceed thirty days or by both such fine and imprisonment in the discretion of the court.

4400(19)

When left in highway.

SEC. 19. If any building or other obstruction as aforesaid shall, in the process of moving, be left in the highway so as to interfere with the travel thereon, the commissioner or commissioners may notify the person at fault to remove the same within two days, such notice to be either verbal or in writing, and if such building or obstruction be not removed pursuant to such notice the person at fault shall be liable to a penalty of five dollars per day for each day that the same shall remain unremoved, and after five days the commissioner or commissioners may proceed to remove it at the expense of the owner or owners thereof.

Penalty.

Encroachments on highway.

SEC. 20. All public highways for which the right of way has at any time been dedicated, given or purchased, shall be and remain a highway of the width so dedicated, given or purchased, and no encroachments by fences, buildings or otherwise which may have been made since the purchase, dedication or gift nor any encroachments which were within the limits of such right of way at the time of such purchase, dedication or gift, and no encroachments which may hereafter be made, shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon.

4400(20)

4400(21)

Chapter repealed.

SEC. 21. Chapter seven of act number two hundred eighty-three of the public acts of nineteen hundred nine, being sections four thousand four hundred one to four thousand four hundred fourteen, both inclusive, of the compiled laws of nineteen hundred fifteen, are hereby repealed.

Approved May 27, 1925.

c 7 # 283 1909
c 14401-4414

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[No. 369.]

AN ACT to authorize and regulate the funding of floating indebtedness of counties.

after 2314

*The People of the State of Michigan enact:*

May borrow money, etc.

SECTION 1. Any county having a floating indebtedness of twenty-five thousand dollars or more may borrow money and issue bonds for the purpose of paying such floating indebtedness in the manner and on the conditions following:

2314(3)

Referendum.

SEC. 2. The board of supervisors may by resolution determine the amount of the outstanding floating indebtedness of the county, and may cause the question of borrowing money and issuing bonds for the purpose of paying such floating indebtedness to be submitted to vote of the qualified electors of the county at a general election or at a special

2314(4)

# EXHIBIT C

THE

# COMPILED LAWS

OF THE

# STATE OF MICHIGAN

1915

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COMPILED, ARRANGED AND ANNOTATED UNDER ACT 247 OF 1913 AND ACT 232 OF 1915

BY

EDMUND C. SHIELDS, Lansing, Mich.
CYRENIUS P. BLACK, Lansing, Mich.
ARCHIBALD BROOMFIELD, Big Rapids, Mich.
Commissioners

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WYNKOOP HALLENBECK CRAWFORD CO., STATE PRINTERS
1916

the same conditions and liabilities as in such cases provided, but no such appeal shall have the effect to delay any proceeding hereinbefore by this chapter authorized to be had.

HISTORY: How. 1368;—C. L. '97, 4118;—Sup. 1909, p. 583, Act 283, Eff. Sept. 1.

Maintenance of road by toll and plank road companies.

(4399) SEC. 5. It shall be the duty of the commissioner of highways of each township to see that all plank or gravel road companies, or companies owning or controlling any kind of toll road, maintain their roads in a good and safe condition at all times. When any such plank, gravel or toll road shall become defective, he shall serve a written notice upon any officer or agent of the company owning or controlling the same, describing the locality where such defect exists, and requiring such company to repair such defect within five days from the receipt of such notice; and every such company failing to comply with the requirements of such notice shall for every such offense be subject to a penalty of fifty dollars.

HISTORY: How. 1369;—Am. 1895, p. 213, Act 103, Imd. Eff. Apr. 26;—C. L. '97, 4119;—Sup. 1909, p. 584, Act 283, Eff. Sept. 1.

PENAL STATUTE: This statute is penal so far as it affects toll roads and cannot be extended by construction beyond the plain meaning of its terms. Carver v. Plank Road Co., 61/588; Gravel Road Co. v. Hogadone, 150/648.

The provisions of this section contained in the Highway Law of 1881 did not repeal by implication the provision in the law of 1875 for equitable relief against toll road companies. People v. Plank Road Company, 67/8; Plank Road Co. v. Circuit Judge, 109/378; Township of Erin v. Plank Road Co., 115/470.

Expenses.

(4400) SEC. 6. All proper expenses incurred by any commissioner in complying with the requirements of this chapter shall be paid out of the highway fund of the township.

HISTORY: How. 1370;—C. L. '97, 4120;—Sup. 1909, p. 584, Act 283, Eff. Sept. 1.

## CHAPTER VII—THE OBSTRUCTION OF HIGHWAYS AND ENCROACHMENTS THEREON

Commissioner to order removal of encroachments.

(4401) SECTION 1. In every case where a public highway has been or shall be encroached upon by any fence, building, or other encroachment, the commissioner may make an order under his hand requiring the occupant of the land through or by which such highway runs, and of which such fence, building, or other encroachment forms a part of the enclosure, to remove such encroachment from such highway within thirty days; and he shall cause a copy of such order to be served upon such occupant, and every such order shall specify the width of the road, the greatest extent of the encroachment, and of what it consists, and the place or places in which the same may be, with reasonable certainty; but fences erected for the protection of hedges, or temporary fences for the protection of other improvements, shall not be deemed encroachments, so long as they may be necessary for such protection, unless the road be so fenced up as to make the traveled portion less than eighteen feet wide, provided that such hedges or other improvments be not themselves encroachments.

Certain fences, etc., not encroachments.

HISTORY: How. 1371;—C. L. '97, 4121;—Sup. 1909, p. 584, Act 283, Eff. Sept. 1.

ENCROACHMENTS: The remedy given by this statute is cumulative. It does not abrogate the common law remedy of abatement of nuisance by the mere act of individuals. Neal v. Gilmore, 141/522.

Our laws have always made a distinction between cumbering or obstructing a public way and encroaching upon it. Obstructing is applied to impediments to travel and passage placed in the open street and tending to make its use difficult or dangerous; while encroachment

embraces the actual enclosure of a portion of the street by fences or walks, or occupation by buildings. City of Grand Rapids v. Hughes, 15 / 57; Highway Commissioner v. Withey, 52 / 51.

Under the early statutes the remedy for encroachments only applied to highways that were laid out and opened under the statute and did not apply to highways by user. Parker v. People, 22 / 94; Roberts v. Highway Commissioners, 25 / 26; Campau v. Button, 33 / 526; People v. Smith, 42 / 140; Willson v. Gifford, 42 / 455; Township of Lebanon v. Burch, 78 / 644.

But the law of 1881 and the present law applies to all highways which have become such by legal proceedings or by user. Krueger v. LeBlanc, 62 / 79.

Surveyors may be useful witnesses when they speak of matters with which they are familiar, but they have no greater right than any one else to determine starting points or boundaries. Gregory v. Knight, 50 / 63.

Neither the State nor the local authorities have any power or authority to grant the exclusive use of any of the streets or alleys to individuals. The power to regulate does not include the power to *effect injuriously the public streets.* The People v. Carpenter, 1 / 294.

As to when a private party cannot have relief in equity against an owner of property on the same street who constructs a building three feet over the street line as surveyed, see Werner v. Hinz, 172 / 361.

As to limits of highway by user, see Scheimer v. Price, 65 / 639; Wyman v. Village of St. Johns, 100 / 674.

DUTY OF COMMISSIONER: It is the duty of the highway commissioner when he thinks a road is encroached upon to satisfy himself in some responsible way which will bear the test of a lawsuit, where the highway lines are and how they are encroached upon. Until he complains, no one else can do so. Township of Lebanon v. Burch, 78 / 648; White v. Highway Commissioner, 95 / 288; Township of Greenfield v. Norton, 111 / 54.

ORDER FOR REMOVAL: The order is not of itself proof of the facts stated in it and in the absence of such proof, furnishes no justification. Labo v. Asman, 143 / 27.

The statute purposely named the occupant as the proper person to proceed against for the removal of the encroachment. Krueger v. LeBlanc, 62 / 78.

The object of the order and notice is to point out clearly the extent of the supposed encroachment by declaring how far the fence lies from where it ought to lie. People v. Smith, 42 / 140; Gregory v. Knight, 50 / 63; Krueger v. LeBlanc, 62 / 76; Osborn v. Longsdorf, 70 / 128; LeBlanc v. Krueger, 75 / 562.

Until such notice is given the land holder cannot be regarded as in fault and he cannot be called on to remove anything not distinctly located by the notice. Township of Lebanon v. Burch, 78 / 645.

OBSTRUCTIONS: As to when a fence across a highway constitutes an obstruction and may be abated by injunction, see Hinckley v. Dennison, 169 / 365.

Difference between obstruction and encroachment, see City of Grand Rapids v. Hughes, 15 / 57; Highway Commissioner v. Withey, 52 / 51; Township of Bangor v. Traction, etc., Co., 147 / 169.

Whether an obstruction is a nuisance is a question of fact for the jury and not of law for the Court. The People v. Carpenter, 1 / 289; The People v. Jackson, 7 / 432.

An unauthorized obstruction across a public street is a public nuisance which any citizen desiring to travel along the street may abate if he can do so without a breach of the peace. Plank-Road Co. v. Hilton, 69 / 119; Neal v. Gilmore, 141 / 522.

As to removing snow from street railway track and leaving it in banks on side thereof, see Wallace v. Detroit City Railway, 58 / 231.

Equity will not, in the absence of special circumstances, entertain a bill to remove an obstruction from a township highway. This statute affords an *adequate remedy at law.* Township of Greenfield v. Norton, 111 / 53; But see Township of Bangor v. Traction, etc., Co., 147 / 165.

The penalty for obstructing a highway cannot be enforced by indictment or information. Pettinger v. People, 20 / 337.

A county cannot bring ejectment to remove obstructions from land dedicated to the public use as a street but held adversely to the public. Bay County v. Bradley, 39 / 165.

TREES AND GRASS IN HIGHWAY: Trees in the highway are the property of the adjacent owner and if they encroach upon the highway and must be removed, he has the right and must be afforded reasonable opportunity to take them as living trees and transplant them elsewhere. Clark v. Dasso, 34 / 87.

Ordinarily it may be said that the entire width of the highway may be used by the public, yet the owner of the land over which it passes may within the limits thereof plant trees, set posts and *do such other acts as will add to his* convenience or assist in beautifying his premises. People's Ice Co. v. Steamer Excelsior, 44 / 233.

When upon a country road the travel has been in a uniform beaten track, leaving grass to grow and ripen undisturbed upon the sides of such track, no one but the abutting land owner who owns the fee has the right to harvest it. He can maintain trespass or trover against any person cutting and taking it away against his will. People v. Foss, 80 / 565.

*The right to travel on the highway* is paramount, but no one can exercise that right wantonly to destroy the grass on the highway where both the right of travel and the harvesting and preservation of the grass can be freely and fairly enjoyed. People v. Foss, 80 / 566.

A strip of brush, grubs and trees growing in the middle of a country highway are prima facie evidence of an obstruction of the highway. While such grubs after being cut belong to the owner of the fee, the highway officers are under no obligation *to give him notice to remove them* before cutting them down. DeBoer v. Adams, 159 / 564.

RAILWAY IN HIGHWAY: A railway which is within a highway without authority of law is not rightfully there, *and the public has a right to have it removed* whether it be called an encroachment, an obstruction or a nuisance. Township of Bangor v. Traction, etc., Co., 147 / 169.

NUISANCE: Every encroachment is *not a nuisance and it is a question of fact* and not of law alone whether it becomes so. It must become a source of annoyance and inconvenience to the public before it is a nuisance and it must interfere with the use of the way for the purposes of a way. Clark v. Ice Co., 24 / 511; The People v. Carpenter, 1 / 288.

A tree in the highway is not per se a nuisance and it only becomes such when it constitutes an actual injury or obstruction. Clark v. Dasso, 34 / 87.

It is a nuisance to obstruct a public *highway by constructing a fence across it* and a bill lies to enjoin the defendant from maintaining such fence. Hickley v. Denison, 169 / 365.

FRUIT STAND ON SIDEWALK: A fruit stand in operation on the sidewalk of a public street is both an incumbrance and obstruction. Pastorino v. City of Detroit, 182 / 15.

(4402) SEC. 2. If such encroachment shall not be removed within thirty days after the service of a copy of such order, such occupant shall forfeit the sum of fifty cents for every day after the expiration of that time during which such encroachment shall continue unremoved, to be recovered in an action of trespass before any justice of the peace of the township, or of an adjoining township in the same county, and the commissioner may proceed to remove such encroachment in the same manner that he may do in case of the opening of a highway, and the person at fault be liable for the costs and expenses of such removal. The highway commissioner shall keep an accurate account of the expenses incurred by him in carrying out the provisions of this and the preceding sections of this chapter, and shall present a full and complete statement thereof, together with a full and legal description of the lands entered upon, to the occupants of such lands, the said statement having been duly verified by the oath of the highway commissioner, requiring the said occupant to pay the amount therein set forth, and in case such occupant shall refuse or neglect to pay the same within thirty days after such notice and demand, the highway commissioner shall present a duly verified copy of said statement to the township board of the township in which such expense was incurred, for their examination and action thereon, and if the said township board shall so recommend, the supervisor of the township shall cause the amount of all such costs and expenditures to be duly assessed and levied on the lands described in the statement of the commissioner of highways, which sum so assessed and levied shall be collected in the same manner as delinquent highway taxes are collected, but no person shall be required to remove any fence under the provisions of this section between the first day of May and the first day of September unless such fence shall have been made within three months next before the making of the order for the removal thereof: *Provided*, That if the person upon whom the copy of such order shall be served at any time before the expiration of said thirty days, by a written notice served upon the commissioner, deny such encroachment either in whole or in part, or shall deny the existence of a highway where such encroachment is claimed to exist, the commissioner, instead of proceeding to remove such encroachment, shall commence an action of trespass against the person upon whom the copy of such order was served, as hereinafter provided.

Penalty for failure to remove encroachments.

Duty of commissioner.

Costs and expenditures to be assessed.

Proviso, action of trespass.

HISTORY: How. 1372;—C. L. '97, 4122;—Am. 1899, p. 381, Act 244, Eff. Sept. 23;—Sup. 1909, p. 584, Act 283, Eff. Sept. 1.

REMEDY FOR ENCROACHMENT: The remedy to recover the penalty under this section for an encroachment does not lie where the facts show an obstruction instead of an encroachment. Highway Commissioner v. Withey, 52 / 51.

Questions of title to real estate, whether the road exists at all or what are the true lines between adjoining tracts of land, cannot be tried in this proceeding. It is only intended to try the question of where the road is and whether the encroachment is within it. Roberts v. Highway Commissioners, 25 / 27; Sheldon v. Kalamazoo, 24 / 383; Campau v. Button, 33 / 527; Gregory v. Stanton, 40 / 272; Willson v. Gifford, 42 / 456; Gregory v. Knight, 50 / 63; Township of Lebanon v. Burch, 78 / 644.

An adequate equitable remedy against encroachments is also provided. Gregory v. Knight, 50 / 64; Township of Bangor v. Traction, etc., Co., 147 / 169.

But see cases holding that equity has no jurisdiction. Township of Lebanon v. Burch, 78 / 646; Township of Greenfield v. Norton, 111 / 53.

A public nuisance clearly made out cannot be lawfully abated by any private person not specially aggrieved by it. Clark v. Ice Co., 24 / 511.

Insufficient description of encroachment in suit to recover penalty, see Varden v. Ritchie, 86 / 197.

In trespass by a commissioner to recover for an alleged encroachment it was held that a highway by user includes only

so much land as is used for that purpose. Scheimer v. Price, 65 / 639.

NOTICE OF DENIAL: The occupant of land charged with an encroachment upon a highway is not called upon to serve upon the commissioner a notice denying the existence of such highway until after he is served with a copy of the commissioner's order for the removal of the alleged encroachment. Osborn v. Longsduff, 70 / 129.

As to when failure to serve notice of denial will not be fatal, see Labo v. Asam, 143 / 25.

REMOVAL OF ENCROACHMENT: The officer proceeding to remove an encroachment is justified only in the fact that the highway is encroached upon and is liable for any trespass he may commit if it turns out not to be a highway and an encroachment thereon. Krueger v. LeBlanc, 62 / 79; Cronenwalte v. Hoffman, 88 / 617.

The order is not of itself proof of the facts stated in it and in the absence of such proof furnishes no justification. Labo v. Asam, 143 / 27.

Claim for damages.

(4403) SEC. 3. Such action shall be brought by the commissioner in his name of office, claiming nominal damages only in the sum of six cents, before any justice of the peace of the township, or of any adjoining township in the same county. The declaration in such action shall follow the order required by section one of this chapter, in describing such encroachment; and the defendant may plead denying the encroachment in whole or in part, and may also deny the existence of a highway where such encroachment is claimed to be; if he shall have denied the same in the notice which, by the last preceding section, he may serve upon the commissioner, and shall have set the same up in defense at the time of joining issue, and the pleadings of either party may be amended in all respects as provided by chapter two hundred and eighty-four of the Compiled Laws of eighteen hundred and ninety-seven; but otherwise the legal existence of the highway shall not be questioned on the trial, and the fact of such encroachment, and where the true line of the highway is, shall only be tried.

Pleadings.

HISTORY: How. 1373;—C. L. '97, 4123;—Am. 1899, p. 382, Act 244, Eff. Sept. 23;—Sup. 1909, p. 585, Act 283, Eff. Sept. 1.

Chap. 284 of C. L. '97, above referred to was rep. by the Jud. Act of 1915 and reenacted as Compilers' Sections 12264 to 12267 and 12478 to 12485.

DECLARATION: The intention of the statute is to have an exact conformity between the order and the declaration. The declaration should be in writing and if not, the verbal declaration must be *equally specific*. LeBlanc v. Kruger, 75 / 561; Township of Lebanon v. Burch, 78 / 646.

In a suit for the penalty set forth in Sec. 2, *there can be no recovery* if it appears that the encroachment as described is not in the highway as described in the declaration. Varden v. Ritchie, 86 / 197.

Under the act of 1881 it was held that a declaration cannot be amended on the trial so as to change the description of the land alleged to be encroached upon. Graham v. Langston, 65 / 47.

PRIOR LAWS: Osborn v. Longsduff, 70 / 129; Wyman v. Village of St. Johns, 100 / 574; Township of Greenfield v. Norton, 111 / 54; Watz v. Sunderland, 147 / 97.

Summons, jury and other proceedings.

(4404) SEC. 4. The summons in such action may be in the same form, and shall be issued and served, and a jury shall be impaneled when demanded, and all proceedings had as near as may be, as in cases of personal actions of trespass, and full costs shall be taxed by the justice and paid by the losing party, except that if the commissioner demands a jury he shall not be required to advance the jury fee, and the adjournment of the trial shall not exceed ten days in all. The jury shall specify in their verdict, if they find the defendant guilty of causing or maintaining the encroachment as charged, and the extent thereof, and if the existence of the highway has been denied, they shall also specify, if they find a highway to exist, whether it be such by public use or by having been regularly laid out and established as a public highway. In the trial of any cause involving the existence of any highway, the burden of proof shall be upon the contestants to show that the same has not been regularly laid out and established as a public highway, or has not become such by public use.

Finding of jury.

Burden of proof.

HISTORY: How. 1374;—C. L. '97, 4124;—Sup. 1909, p. 586, Act 283, Eff. Sept. 1.

PRIOR LAWS: Gregory v. Knight, 50 62; Krueger v. LeBlanc, 62/79; Township of Greenfield v. Norton, 111/64.

(4405) SEC. 5. Either party may appeal to the circuit court of the proper county in the same manner that appeals are taken from justices' courts in other cases, but in case of an appeal taken by the commissioner he shall not be required to pay the costs or furnish an appeal bond. In case of such appeal, trial shall be had on the issue joined in the justice court, and in case of a judgment in any court against the commissioner, no execution shall issue, but the judgment shall be certified to the proper supervisor and the amount thereof assessed and collected as in case of judgments against townships. Appeal to circuit court.

HISTORY: How. 1375;—C. L. '97, 4125;—Sup. 1909, p. 586, Act 283, Eff. Sept. 1.

PRIOR LAWS: Campau v. Button, 33/526; Graham v. Langston, 66/47; Township of Lebanon v. Burch, 78/646; Township of Bangor v. Traction, etc., Co., 147/106.

(4406) SEC. 6. In all cases of final judgment against any person for causing or maintaining an encroachment, the commissioner may proceed to remove the same within ten days after such judgment, in the same manner that he may do under section two of this chapter, where the encroachment or the existence of the highway is not denied, and the penalty prescribed in said section two shall attach and continue from and after the expiration of the thirty days mentioned therein, until such encroachment be removed: *Provided,* That in all cases of final judgment against any person or persons for causing or maintaining an encroachment or obstruction upon the highway, if such person or persons shall, *subsequent to such final judgment, by force or otherwise, interfere* with the commissioner of highways in the performance of his duties under this act, or if such person or persons shall place or cause to be placed any of the encroachments or obstructions which had been removed, or in any way interfere with the said highway, the highway commissioner may, upon complaint duly made before any justice of the peace of said township or of an adjoining township, cause the arrest of such persons or persons, and if a conviction shall be had under such complaint made of the offense charged therein, such person or persons having been adjudged guilty, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court. Proceedings after final judgment. Proviso, punishment for interference with commissioner.

HISTORY: How. 1376;—C. L. '97, 4126;—Am. 1899, p. 383, Act 244, Eff. Sept. 23;—Sup. 1909, p. 586, Act 283, Eff. Sept. 1.

PRIOR LAWS: Township of Lebanon v. Burch, 78/646; Township of Greenfield v. Norton, 111/64.

(4407) SEC. 7. All public highways for which the right of way has at any time been given or purchased for a highway sixty-six feet wide, shall be and remain sixty-six feet wide, and no encroachments by fences, buildings or otherwise which may have been made since the purchase or gift of such sixty-six feet, nor any encroachments which were within the limits of such sixty-six feet at time of purchase or gift, and no encroachments which may hereafter be made, shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon. Width of highways.

HISTORY: Sec 1907, p. 383, Act 263, Eff. Sept. 28;—Sup. 1909, p. 587, Act 283, Eff. Sept. 1.

Right to set poles.

(4408) SEC. 8. No person or persons, firm or corporation shall have the right to set a pole or poles along the line of any public highway, within twenty-five feet of the center of the highway on either side, without the consent of the township board in the township in which such highway is located and where such pole or poles are to be set; and in no case shall the poles be set within fifteen feet of the center of the highway on either side.

HISTORY: See 1907, p. 333, Act 263, Eff. Sept. 28; Sup. 1909, p. 587, Act 283, Eff. Sept. 1; Am. 1911, p. 393, Act 223, Eff. Aug. 1.

Use of highway for transmitting electricity, see 1905, p. 388, Act 264, being Compilers' Section 4841.

How franchise for use of highways may be obtained, see 1909, p. 464, Act 266, being Compilers' Sections 4836 to 4840.

Giving Michigan Railroad Commission supervision over transmission of electricity in highways, see 1909, p. 213, Act 106, being Compilers' Sections 4842 to 4850.

Removal of poles, etc.

(4409) SEC. 9. Any party or parties, firm or corporation violating any of the provisions of this act, shall, upon demand of the township highway commissioner of the township in which such highway is located, remove such encroachments, poles or posts. If removal be not made within thirty days after written demand be made by the said highway commissioner, then the said commissioner shall have the right to remove such encroachments, poles or posts and the party, parties, firm or corporation, so violating, shall be liable for the amount of expense incurred in making such removal.

HISTORY: See 1907, p. 333, Act 263, Eff. Sept. 28;—Sup. 1909, p. 587, Act 283, Eff. Sept. 1.

Buildings in process of moving.

(4410) SEC. 10. If any building or other serious obstruction shall, in the process of moving, be left in the highway, so as to interfere with the travel thereon, the commissioner may notify the person at fault to remove the same within two days, such notice to be either verbally or in writing, and if such obstruction be not removed pursuant to such notice the person at fault shall be liable to a penalty of five dollars per day for each day that the same shall remain unremoved, and after seven days the commissioner may proceed to remove it.

Penalty for failure to remove.

HISTORY: How. 1377;—C. L. '97, 4127;—Sup. 1909, p. 587, Act 283, Eff. Sept. 1.

Saw logs, cordwood, etc., removal of.

(4411) SEC. 11. In case any saw logs, cordwood, or other loose obstruction shall be upon any highway, the commissioner may notify the owner, if known, to remove the same within three days, and if not so removed, or the owner is unknown, the commissioner may remove such obstruction to some convenient place, and if it have a value he shall hold it for thirty days subject to the order of the owner upon payment of the necessary expenses of removal, after which time he may sell the property removed, and such sale, notice of sale and application of the proceeds thereof shall be the same as is now required by law of constables on sale under execution, and the expense of removal, care of property and sale shall be deducted from the proceeds of sale, and the balance paid to the owner of such property, or deposited with the township clerk to be by him paid to the owner. In case the article or thing have no value or is not of sufficient value to pay for the removal, the commissioner shall be entitled to compensation for the expense of removing it, to be audited and allowed by the township board, and

When commissioner may sell.

When commissioner entitled to compensation.

the expense of removal may be recovered from the owner in the name of the township in an action of assumpsit.

HISTORY: How. 1378;—C. L. '97, 4128;—Sup. 1909, p. 587, Act 283, Eff. Sept. 1.

LUMBER IN STREET: A lumber pile placed by an abutting owner within the street line adjacent to the graded part of the street is not an encroachment or defect, but if unlawfully there is an obstruction to the use of the way. McArthur v. Saginaw, 58/360.

As to whether the owner of premises adjoining a highway can fill up any portion of the same with stones, wood-piles, brush heaps or other refuse matter without liability to one who suffers injury thereby, quaere. Bennett v. Hazen, 66/661.

PRIOR LAWS: Township of Greenfield v. Norton, 111/54; Township of Lebanon v. Burch, 78/645.

Fence, petition for removal, etc.

(4412) SEC. 12. Upon the petition of twenty freeholders, residents of the same township, addressed to the highway commissioner of their township, stating that any particular fence other than a stone or hedge fence, along any highway within their township, by reason of its construction or otherwise, is dangerous either of itself or by reason of causing obstruction to the highway, it shall be the duty of the said township highway commissioner to notify the owner, or the occupant of the premises whereon said fence is located, to remove the said fence. Upon the neglect or refusal of the said owner or occupant to remove said fence within thirty days after such notice, it shall be the duty of the highway commissioner to remove or cause to be removed, the said fence, and the expense incurred thereby shall be paid from the general fund of the township, and all costs thereby incurred shall be assessed against the property whereon such fence was located, and shall constitute a tax against said property, to be levied and collected as other township taxes are assessed, levied or collected: *Provided*, That any owner or occupant of any land who, having received notice to remove any fence, deeming himself aggrieved, shall have the right to appeal to the township board, such appeal to be in writing and served upon the township clerk within ten days of the receipt of said notice. Upon said appeal it shall be the duty of the township board to carefully determine the facts concerning the removal of said fence, and shall either dismiss or confirm the order of the highway commissioner as to the removal of such fence. The township board shall award any damage to such owner or occupant for the removal of such fence, as in its judgment seems just, and such award shall be paid from the general fund of the township. Any person conceiving himself aggrieved by the order, determination or award of the township board, may appeal therefrom to the circuit court of the county in which such township is situated; such appeal to be taken and perfected in the same manner as is provided by law with respect to appeals from justices' courts. The issue shall be as to whether such fence should be removed, and if removed, the damages to which the owner is entitled.

Refusal.

*Proviso*, appeal.

Duty of township board.

Damages.

HISTORY: Add. 1913, p. 223, Act 125, Eff. Aug. 14.

Petition to remove fence.

(4413) SEC. 13. In counties operating under the county road system, upon a petition of twenty freeholders, each of whom are the owners of property abutting upon a part of the county road system of said county, and being residents of the same county, addressed to the board of county road commissioners of their county, stating that any particular fence, other than a stone or hedge fence, along any highway adopted as a county road within

# EXHIBIT D

# TITLE IX
# HIGHWAYS AND MOTOR VEHICLES

## PART ONE. HIGHWAYS, BRIDGES AND FERRIES

### CHAPTER 65. GENERAL HIGHWAY LAW

GENERAL HIGHWAY LAW
Act 283 of 1909

Act 283, 1909, p. 544; Eff. Sept. 1.

AN ACT to revise, consolidate and add to the laws relating to the establishment, opening, discontinuing, vacating, closing, altering, improvement, maintenance and use of the public highways and private roads, the condemnation of property and gravel therefor; the building, repairing and preservation of bridges; setting and protecting shade trees, drainage, cutting weeds and brush within this state, and providing for the election and defining the powers, duties and compensation of state, county, township and district highway officials.

*The People of the State of Michigan enact:*

General Highway Law
Act 283 of 1909



3916 Establishment and maintainance of highways and private roads; authority of municipalities; duties of highway officials. Section 1. Public highways and private roads may be established, opened, improved and main-

tained within this state under the provisions of this act, and the counties, townships, cities, villages and districts of this state shall possess the authority herein prescribed for the building, repairing and preservation of bridges and culverts; the draining of highways, cutting of weeds and brush in the improvement of highways and the duties of state, county, township, city, village and district highway officials shall be as defined in this act.

HISTORY: C. L. '15, 4287. Title Am. 1929, p. 61, Act 31, Eff. Aug. 28.

FORMER ACTS: This act is a codification of the laws relating to public highways, private roads and bridges. It supersedes the following acts:

*Act 313 of 1881 as amended being C. L. '97,* 4035 to 4050 and 4057 to 4070, and 4072 to 4192: Act 306 of 1905 which repeals Act 62 of 1889 being C. L. '97, 4051 to 4056; Act 163 of 1889 being C. L. '97, 4071; Act 173 of 1897 being C. L. '97, 4193 to 4197; Act 154 of 1859 as amended, being C. L. '97, 4198 to 4201; Act 176 of 1881, being C. L. '97, 4202; Act 66 of 1883 as amended, being C. L. '97, 4203 to 4209; Act 71 of 1881, being C. L. '97, 4210 to 4211; Act 72 of 1881, being C. L. '97, 4212 to 4213; Act 234 of 1879, being C. L. '97, 4214 to 4215; Act 140 of 1895 as amended, being C. L. '97, 4216 to 4219; Act 16 of 1883, being C. L. '97, 4220 to 4223; Act 57 of 1883, being C. L. '97, 4224 to 4225; Act 13 of 1885, being C. L. '97, 4228; Act 140 of 1903, as amended being C. L. '97, 4202 to 4290; R. S. '46, Chap. 44, being C. L. '97, 4291 to 4297; Act 264 of 1887, being C. L. '97, 3441 to 3445; Act 159 of 1903 which repeals Act 21 of 1893, being C. L. '97, 3446 to 3448; Act 103 of 1895, being C. L. '97, 2513 to 2522; Act 91 of 1897, being C. L. '97, 2353 to 2386 which act was declared unconstitutional in Grave) Road v. Hogadone, 150 Mich. 638, 641, 114 N. W. 917, Act 72 of 1899; Act 76 of 1899 as amended; Act 56 of 1903 as amended; Act 203 of 1903; Act 231 of 1903 as amended; Act 69 of 1905; Act 140 of 1905 as amended; Act 247 of 1905; Act 108 of 1907 as amended, Act 166 of 1907; Act 168 of 1907; Act 263 of 1907; Act 327 of 1907; Act 269 of 1907; Act 249 of 1897 being C. L. '97, 3499 to 3511; Act 261 of 1859 being C. L. '97, 6707 to 5708; Act 292 of 1887 being C. L. '97, 5516 to 5521.

Transfer to City of Lansing of certain lands for street and highway purposes, see Act 212 of 1907.

Authorizing the City of Grand Rapids to use highways between Grand Rapids and Lake Michigan for water mains, see Act 265 of 1907.

Improvement of Fort Gratiot Turnpike, see Act 90 of 1911 and Act 62 of 1915.

State public wagon road extending from village of Soney, see Act 68 of 1913 and Act 179 of 1915.

CONSTITUTIONALITY: See Const. VIII, 26.

General highway law, containing no provisions not germane to and covered by title of act, *held* not unconstitutional because of defective title. State Highway Comr. v. Breisacher, 231 Mich. 317, 204 N. W. 112.

*PRIOR ACTS REPEALED:* The subject matter contained in Act 108 of 1907 (repealed) was state-wide and repealed the local act of 1903 (Act 293) providing for assessment of highway taxes in Port Huron. Port Huron Engine & T. Co. v. Port Huron Twp., 191 Mich. 590, 158 N. W. 19.

Act 71 of 1903, (See prior amended form of Compilers' § 4783) providing that no township shall be liable for damages from the breakage of any bridge by any steam engine or vehicle weighing more than six tons, is not impliedly repealed by this act. Lundstrom v. Ellsworth Twp., 195 Mich. 562, 162 N. W. 990.

It was not clear in 1913 that Act 57 of 1901 was repealed by Act 108 of 1907, (superseded by this act). Feily v. Bay View Camp Ground Assn., 210 Mich. 397, 177 N. W. 486.

SCOPE: Much of the ancient law is preserved and reenacted in this statute. McRae v. Hart Twp., 179 Mich. 325, 329, 146 N. W. 121.

This act was passed to "revise, consolidate and add to" existing laws on the subject, in an effort to get the scattered highway laws together and in more harmonious working condition. Clearwater Twp. v. Kalkaska Supvrs., 187 Mich. 516, 153 N. W. 824.

*CONSTRUCTION OF STATUTES:* See Compilers' § 76.

COVERT ACT: See Act 59 of 1915, being Compilers' § 4314 et seq.

PLAT ACT: See Act 172 of 1929, being Compilers' § 13198 et seq.

STREETS AND SIDEWALKS: Sidewalks, see Compilers' § 4208 et seq.

*Streets, recovery of damages,* see Compilers' § 4223 et seq.

Villages, see Compilers' § 1335 et seq.; fourth class cities, see Compilers' § 2011 et seq.; home rule cities, see Compilers' § 2238.

Street commissioner, fourth class cities, see Compilers' § § 1884 and 1885.

HIGHWAYS: A highway is a public passage for all. People v. Beaubien, 2 Doug. (Mich.) 256, 285.

An alley is not a highway. To constitute a highway it must be one over which all the people of the State have a common and an equal right to travel and which they have a common or at least a general interest to keep unobstructed. People v. Jackson, 7 Mich. 432, 446.

Ways must be either public or private. There is no intermediate species of way for any purpose of passage. Tillman v. People, 12 Mich. 401, 403.

A highway is a public way for the use of the public in general for passage and traffic without distinction. Macomber v. Nichols, 34 Mich. 212, 216.

A cul de sac may be a public highway. *Fields* v. Colby, 102 Mich. 449, 454, 60 N. W. 1048; Rogren v. Corwin, 181 Mich. 53, 56, 147 N. W. 517.

A turnpike road becomes a public highway on forfeiture of franchise. Twp. Highway Comr. v. Cobb, 104 Mich. 395, 62 N. W. 554.

A highway not within an incorporated village or city cannot be laid out over navigable waters. A highway is not a wharf or landing place. *Twp. Highway Comr.* v. *Ludwick*, 151 Mich. 498, 500, 115 N. W. 410.

A highway is a way or thoroughfare open to all, a way over which the public at large have a right of passage; the name being derived from alta via, or king's highway, meaning a thoroughfare opened and maintained by the highest authority common to all, for the free use of the sovereign and all his subjects. Burdick v. *Harbor Springs Lumber Co., 167 Mich.* 673, 679, 133 N. W. 822.

A road to which the public can gain access and use for practical purposes only by trespassing upon private property, cannot be considered a public highway. Ayres v. Richards, 41 Mich. 680, 681, 3 N. W. 179.

SAME: USE: Highways, whether by land or water, must be used with due regard to their lawful and proper use by others. Ordinarily it may be said that the entire width of the highway may be used, yet the owner of the land over which it passes may, within the limits thereof, plant trees, set posts, and do such other acts as will add to his convenience or assist in beautifying his premises. People's Ice Co. v. "Excelsior," 44 Mich. 229, 233, 6 N. W. 636.

The rights of travelers on a highway are mutual and co-ordinate. It is the duty of each to so use his right of passage as not to cause injury or detriment to another having a like

right. Pigott v. Engle, 60 Mich. 221, 223, 27 N. W. 3.

The fee in the highway is in the abutting owner, subject only to the easement of the public to use it for the purpose of a highway. People v. Foss, 80 Mich. 559, 564, 45 N. W. 480; Graham v. Detroit, 174 Mich. 533, 542, 140 N. W. 949.

Subject to the constitution and the property rights of abutting owners, the Legislature has paramount authority over all public ways. Scovel v. Detroit, 146 Mich. 93, 95, 109 N. W. 29.

A municipality in its control of highways acts for the State. Graham v. Detroit, supra.

SAME: CONTROL: We have no instance in our local institutions of the laying out of ways except by the persons chosen in the community that is burdened. Drain Comr. v. Baxter, 57 Mich. 127, 131, 23 N. W. 711.

Public highways are under legislative control. They are for the use of the public in general for passage and traffic without distinction. The restrictions upon their use are only such as are calculated to secure to the general public the largest practicable benefit for the enjoyment of the easement. People v. Eaton, 100 Mich. 208, 211, 59 N. W. 145.

PURCHASE AND CONDEMNATION OF PROPERTY: See Compilers' § 3886 et seq. and Act 352 of 1925, being Compilers' § 3884 et seq.

REVIEW: Compilers' § 15968, providing that in cases not specifically prohibited appeal lies from probate judge, is not applicable to condemnation proceedings and certiorari is a proper method of reviewing proceedings under this act, though it provides for no review from probate court. Oakland Co. Rd. Comrs. v. Pittmans & Dean Co., 262 Mich. 32, 167 N. W. 978.

TAX LEVY UNDER SUBSEQUENT ACTS: This act, which provided for highway improvements by counties and road districts and limited taxes therefor, *held* not construable as limitation on tax which might be levied for road purposes under authority of subsequent acts. Cooper, Wells & Co. v. St. Joseph, 232 Mich. 255, 205 N. W. 86.

CITED: Groves v. Bowman, 201 Mich. 40, 166 N. W. 933; Patterson v. Ravenna Twp., 229 Mich. 133, 201 N. W. 188.

## CHAPTER I

## LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS



### WATERWAYS ON OVERFLOWED LANDS ACT 174 OF 1921



### DISCONTINUATION OR ALTERATION OF PUBLIC HIGHWAYS ACT 341 OF 1927

CHAPTER I—LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS.

**3917 Width of highways; authority to establish or discontinue; joint and concurrent action; section lines.** SECTION 1. Public highways shall not be less than four [4] rods in width, except when laid out and established in the manner hereinafter prescribed, and they may be laid out, altered or discontinued under the provisions of this chapter:

First, By the commissioner of highways of any township, within his township, upon the written application of seven [7] or more freeholders of such township;

Second, By the joint action of the commissioners of highways of adjoining townships, on the line between such townships, on the written application of seven [7] or more freeholders of each township, addressed to the commissioner of either township;

Third, By the concurrent action of the commissioner of highways of any township and the municipal authority of any adjoining city or village having, by law, jurisdiction in laying out streets or highways, on the line between such township and such city or village, on the written application of seven [7] or more freeholders of each township, city or village;

Fourth, Commissioners of highways shall also have power to lay out and establish highways on section lines, through unineloscd and unimproved lands, without the application required by the first [1st] subdivision of this section.

HISTORY: C. L. '15, 4288. This section supersedes, with additions, part of Sec. 1 of Ch. I of Act 243 of 1881, being How. 1200;—C. L. '97, 4036;—As Am. 1901, p. 378, Act 242, Imd. Eff. June 8;—As Am. 1905, p. 82, Act 50, Eff. Sept. 16.

WIDTH: See also Compilers' § § 3930, 3946, 3956, and (plat act) 13219. State line highway, see Compilers' § 3944. Turnpike, see Compilers' § 3970. Improved roads, see Compilers' § 4284.

The provision that public highways shall not be less than four rods in width does not prohibit the establishing of roads of greater width than four rods. Brown v. Greenfield Twp., 109 Mich. 557, 560, 67 N. W. 566.

It will be presumed that a highway laid out is continuous at a uniform width across a ravine or creek. Schneider v. Brown Twp., 142 Mich. 46, 54, 105 N. W. 13.

The use by the public of a portion of a strip of land claimed to be a public way does not of necessity either in city streets nor in country roads determine the public right to extend over four rods in width. Detroit v. Myers, 102 Mich. 665, 670, 116 N. W. 620; Walz v. Sunderland, 147 Mich. 96, 97, 110 N. W. 507.

It is the business of the authorities when roads are laid out to designate the boundaries on the ground and to have the lines visibly defined. Gregory v. Knight, 50 Mich. 61, 64, 14 N. W. 700.

Prior to Act 243 of 1881 it was held that a highway by user can extend no further than it has been used. Coleman v. F. & P. M. R. R. Co., 64 Mich. 160, 163, 31 N. W. 47.

PURCHASE AND CONDEMNATION OF PROPERTY: See Compilers' § 3936 et seq. and Act 352 of 1925, being Compilers' § 3984 et seq.

COMMISSIONERS: POWER AND AUTHORITY: Except in the case covered by subd. 4, the written application signed by freeholders is a condition precedent to the power of the commissioner to lay out a highway. Roberts v. Cottrellville Highway Comrs., 25 Mich. 23, 26; See also People v. Scio Twp., 3 Mich. 121, 122; Wilson v. Burr Oak Twp., 87 Mich. 240, 247, 49 N. W. 572.

But in applications under subd. 4 the highway commissioner has authority to lay out a highway without a petition or application from anyone. Letourneau v. Erickson, 182 Mich. 617, 627, 148 N. W. 675.

An application which fails to state that the petitioners are freeholders of the township confers no jurisdiction on the commissioner. Wilson v. Burr Oak Twp., supra.

ALTERING HIGHWAY: There is nothing in the law of this state which forbids the altering of a highway on account of its long continued use. Weber v. Ryers, 82 Mich. 177, 46 N. W. 223.

DISCONTINUING HIGHWAY: Line roads between townships or between townships and municipalities which have been in use for ten years cannot be discontinued, except upon the unanimous vote of all the officers present and approved by the township board or boards, etc., Weber v. Ryers, 82 Mich. 177, 178, 46 N. W. 223.

Where a highway is vacated conditionally, it does not become a highway again by the suspension of the conditional occupation. Cooper v. Detroit, 42 Mich. 584, 589, 4 N. W. 262.

Highways may be wholly or partially discontinued by non-user. Gregory v. Knight, 50 Mich. 61, 64, 14 N. W. 700; Lyle v. Lesia, 64 Mich. 19, 22, 31 N. W. 23; Coleman v. F. & P. M. R. R. Co., 64 Mich. 160, 163, 31 N. W. 47.

If the public discontinues use of the property taken as a highway it at once reverts to the owner of the adjoining lands from which it was taken. Custer Twp. v. Dawson, 178 Mich. 367, 370, 144 N. W. 862.

Proceedings to open one highway and discontinue another cannot be combined. Only one proceeding can be taken at a time and every road must be opened or closed on its own merits. Shue v. Highway Comr., 41 Mich. 638, 640, 2 N. W. 809; Cox v. Comr., 83 Mich. 193, 194, 47 N. W. 122; Horton v. Williams, 99 Mich. 423, 429, 58 N. W. 369.

RIGHTS OF ABUTTING OWNER: Damages to the amount of the value of the land taken for farming purposes must be allowed to the owner by the commissioner before the public can acquire any rights or interest in the property condemned. Weber v. Stagray, 73 Mich. 32, 36, 42 N. W. 665.

A jury or commissioners appointed by a court of record are not essential to the validity of action by highway commissioners in either laying out or discontinuing highways. People v. Nankin Highway Comrs., 15 Mich. 347, 351.

The rights of the public in a highway do not give it any right to place a part of an embankment across a ravine upon the lands of an abutting owner. Schneider v. Brown Twp., 142 Mich. 46, 56, 105 N. W. 13.

The fee with certain substantive rights remains in the abutting owner. Twp. of Custer v. Dawson, 178 Mich. 367, 370, 144 N. W. 862; Graham v. Detroit, 174 Mich. 538, 542, 140 N. W. 949.

The owners of the land abutting on a public way have the lawful right to use and exercise jurisdiction over it in any reasonable way they wish, so long as they do not interfere with the public easement, or obstruct the travel over the same. Crosby v. Greenville, 183 Mich. 452, 458, 150 N. W. 246.

STATE AND TERRITORIAL ROADS: Power to open, alter or discontinue state or territorial roads is lodged in the board of supervisors. People v. Nankin Highway Comrs., 15 Mich. 351; People v. Ingham Co. Supvrs., 20 Mich. 95, 100; Atty. Gen. v. Bay Supvrs., 34 Mich. 46; Greenman v. Shiawassee Supvrs., 38 Mich. 642, 643; Pearsall v. Eaton Supvrs., 71 Mich. 438, 441, 39 N. W. 578.

But townships are charged with the duty to maintain and repair these roads and are liable in damages for injuries resulting from failure to keep them in repair. Sharp v. Evergreen Twp., 87 Mich. 443, 447, 35 N. W. 67; Peninsular Sav. Bank v. Ward, 113 Mich. 87, 92, 76 N. W. 161, 79 N. W. 914.

The territorial roads became state roads when Michigan was admitted as a State. Delta Lumber Co. v. Wayne Auditors, 71 Mich. 572, 576, 40 N. W. 1.

A state road cannot be discontinued without notice to adjoining land owners and an award of damages. Pearsall v. Eaton Supvrs., 74 Mich. 558, 42 N. W. 77.

State roads are such only as have been laid out by state authority. Davies v. Saginaw Supvrs., 89 Mich. 295, 300, 50 N. W. 862.

The legislature has control over the state and territorial roads and may authorize the construction of street railways over them. Smith v. Jackson & B. C. Traction Co., 137 Mich. 20, 25, 100 N. W. 121.

TOWNSHIP LINE ROADS: Where a township line road has been alloted under the statute, between two townships, each becomes liable to keep its portion in repair and neither township can legally obligate itself to aid in the erection of a bridge forming a part of that portion of such highway alloted to the other township. Wrought Iron Bridge Co. v. Jasper Twp., 68 Mich. 441, 448, 36 N. W. 213.

A township cannot ratify a contract it could not legally enter into in the first instance. Wrough Iron Bridge Co. v. Jasper Twp., supra. Taymouth v. Koehler, 35 Mich. 25.

Proceedings for laying out a township line road must be taken jointly by the highway commissioners of both townships. Proceedings by one commissioner are void. Brewer v. Gerow, 88 Mich. 260, 47 N. W. 113.

LIABILITY FOR PERSONAL INJURIES: Under this section and Compilers' § § 3936 and 4223, township can not be held liable for injuries from hole in temporary road around point in highway, where railway across the highway was being constructed. Brown v. Byron Twp., 160 Mich. 584, 155 N. W. 544.

**3918 Application; description of road.** SEC. 2. In applications for laying out or altering a highway, the route along which the road is proposed to be laid, or the extent to which its route is proposed to be changed, shall be described in general terms, and where the application is for the alteration or discontinuance of a road, such road may be described by any name by which it is known, and if the discontinuance of only a portion of any road is asked for, such portion shall be specified.

HISTORY: C. L. '15, 4289. This section reenacts Sec. 2 of Ch. I of Act 243 of 1891, being How. 1297;—C. L. '97, 4037.

DESCRIPTION OF HIGHWAY: As to sufficiency of description of highway see Shepard v. Gates, 50 Mich. 495, 496, 15 N. W. 878.

The highest degree of certainty is not required. If places are designated which will enable persons familiar with the locality to locate the way with reasonable certainty, the description will be deemed sufficient. Page v. Boehmer, 154 Mich. 693, 696, 118 N. W. 602.

A description beginning at a specific point and "running nearly in a northwesterly direction near where the travel is now seeking to get the best route," is void for uncertainty. Blodgett v. Whaley, 47 Mich. 469, 470, 11 N. W. 276.

LAYING OUT AND DISCONTINUING: Proceedings upon a twofold application to open one highway and discontinue another cannot be combined. Every road must be opened or closed on its own merits. Shue v. Twp. Highway Comr., 41 Mich. 638, 640, 2 N. W. 808.

Authority to lay out highways does not include a power to lay one out over navigable waters. Highway Comr., v. Ludwick, 151 Mich. 498, 500, 115 N. W. 429.

VARIATION FROM LINE: Township highway commissioner, petitioned to lay out highway along quarter section line, might make slight variation from line to avoid pond hole. Yeatter v. Myers, 241 Mich. 325, 217 N. W. 57.

That highway varied slightly from course described in petition does not render proceedings invalid. Pellich v. Fordson, 245 Mich. 135, 222 N. W. 89.

BOUNDARIES: Highway commissioners and township boards have no authority to act for the mere purpose of settling boundaries. Shue v. Twp. Highway Comr., 41 Mich. 638, 640, 2 N. W. 808.

On appeal where the true boundary line of the section is in dispute the jury should pass upon that question as well as the questions of necessity and damages. Letourneau v. Erickson, 182 Mich. 617, 628, 148 N. W. 675.

VOID PROCEEDINGS: To discontinue a highway are not a bar to regular ones taken to widen it to the statutory width. Weber v. Stagray, 75 Mich. 32, 34, 42 N. W. 685.

**3919 Same; service of notice of hearing by commissioner.** SEC. 3. In case of an application under the first [1st] subdivision of section one [1] of this chapter, the commissioner shall, within five [5] days after receiving the same, issue a written notice, stating the object of such application, and appointing a time and place of hearing, which notice shall be served by the commissioner or by some other competent person, on the owners or occupants of lands through or adjoining which it is proposed to lay out, alter or discontinue such road, either personally or by a copy left at the residence of each owner or occupant, at least ten [10] days before the time of hearing; and if no person shall reside upon any such lands, and the owner thereof shall not reside in

HISTORY: C. L. '15, 4303. This section supersedes part of Sec. 16 of Ch. 1 of Act 243 of 1881, being How. 1311;—C. L. '97, 4057.

SURVEY OF ROAD: The survey of a road is an entire thing, with a given point for its commencement, and by which all the courses *and distances are to be governed.* *Moore* v. People, 2 Doug. (Mich.) 420, 422.

The survey should be incorporated in the order signed by the commissioner and filed *with the township clerk.* *People* v. *Scio Twp.*, 3 Mich. 121, 122.

The declaration in a suit by a commissioner of highways against the county surveyor for his failure to lay out a quarter section line correctly is not demurrable on the ground that defendant is sued in his individual character while described in his official capacity. Highway Comr. of Thompson Twp. v. Beebe, 55 Mich. 137, 20 N. W. 826.

3933 Same; authority of commissioner in extending streets. SEC. 17. Whenever any public road shall be laid out in any township adjoining any city or village, and on the line with any public street, avenue, or way in such city or village extended, the commissioner is hereby authorized to lay out such public road, or any portion thereof, in width to correspond with such street, avenue or way in such city or village, of which the said public road is an extension, and roads thus situated may be widened under the same proceedings as are provided for laying out, altering and discontinuing highways.

HISTORY: C. L. '15, 4304. This section re enacts Sec. 17 of Ch. 1 of Act 243 of 1881, being How. 1312;—C. L. '97, 4058.

LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS: See Compilers' § 3917 et seq.

3934 Removal of fences. SEC. 18. When compensation for any damages that may have been awarded in consequence of laying out or altering any highway shall have been paid or tendered to the persons entitled thereto, pursuant to the provisions of section twenty-four [24] of this chapter, the commissioner may give notice to the owner or occupant of any land through which such highway may have been laid out or altered, and require him, within such time as he shall deem reasonable, not less than sixty [60] days after giving such notice, and after the time when it shall have been determined to open such highway, to remove his fence or fences, and in case such owner or occupant shall neglect or refuse to remove the same within the time specified in such notice, the commissioner or other proper officer shall have full power, and it shall be their duty to enter, with such aid and assistance as shall be necessary, upon the premises, and remove such fence or fences and open such highway, without delay, except that in townships such removal shall not be required between the first [1st] day of May and the first [1st] day of September.

HISTORY: C. L. '15, 4305. This section re-enacts Sec. 18 of Ch. 1 of Act 243 of 1881, being How. 1313;—C. L. '97, 4059, except words "May" and "September" are substituted for "April" and "November."

FORM OF NOTICE: A notice dated April 12th requiring the removal of a fence within *thirty days is valid where no action is taken* by the commissioner under it until November 15th. *Hoag* v. *Boehmer*, 162 Mich. 330, 332, 127 N. W. 263.

REMOVAL OF FENCES: See *Weber* v. *Stagray*, 75 Mich. 82, 84, 42 N. W. 665; *People* v. LaGrange Twp. Bd., 2 Mich. 187, 189.

DRAWING ORDERS: See *Truax* v. *Sterling*, 71 Mich. 160, 163, 41 N. W. 685.

3935 Right of way, acquirement by gift or purchase; release to township, recovery of possession precluded. SEC. 19. The highway commissioner shall secure the right of way for any road by gift or purchase from the owners of the land to be crossed by such road; such right of way shall be acquired by a release duly executed by the owner or owners of the lands and shall be taken in the name of the township wherein the same is located, acknowledged and witnessed as is now provided for the acknowledging and witnessing of deeds, and recorded in the office of the register of deeds of the county before any highway money shall be expended in opening such road. Whenever any owner or owners of land shall give the same or any part thereof for highway purposes and shall give a release of the same, if a road shall be opened and worked thereon within four [4] years thereafter, the person or persons giving such deed, or those claiming under him or them, shall be precluded from having any action to recover possession of such land or any compensation therefor, so long as the same shall be used as a highway.

HISTORY: C. L. '15, 4306. This section supersedes Sec. 19 of Ch. 1 of Act 243 of 1881, being How. 1314;—C. L. '97, 4060.

PURCHASE AND CONDEMNATION OF PROPERTY: See Compilers' § 3986 et seq. and Act 352 of 1925, being Compilers' § 3884 et seq.

DEDICATION: To constitute a valid dedication there must exist the intention to dedicate clearly evinced by the acts of the owner of the land. People v. Beaubien, 2 Doug. (Mich.) 256, 276.

The conduct of an abutting owner in consenting to a survey to fix the line of the highway, his promise to remove the fences, their subsequent removal by the highway commissioner, and his admission that the commissioner was right, constitute a dedication. McMillan v. McCormick, 38 Mich. 693, 694.

The county cannot maintain ejectment to recover possession of a strip of land dedicated to public use as a street and accepted by the public when the defendant holds possession adversely and is creating obstructions. Bay Co. v. Bradley, 30 Mich. 103, 105.

One who has opened a street which the public authorities have accepted and improved, has no right after a lapse of eight years to shut it up again on the ground that the authorities have not performed an oral condition to drain the street and premises. Port Huron v. Chadwick, 52 Mich. 320, 322, 17 N. W. 929.

To constitute a common law dedication of land for a highway the owner of the land must set apart for such purpose so much of the land as he intends to be appropriated therefor and must give it over to the public with the intention that it be used as such and there must be an acceptance thereof by the public. Alton v. Meeuwenberg, 108 Mich. 629, 634, 66 N. W. 571.

By the express dedication of a strip of land of designated width to the public as a highway, any implication of the dedication of a wider strip is precluded. Bedard v. Simons, 169 Mich. 345, 348, 125 N. W. 381.

The right to make a common law dedication is not abridged by the statutory regulations providing for dedication of certain specific ways. Crosby v. Greenville, 183 Mich. 452, 461, 150 N. W. 246.

ACCEPTANCE: Land dedicated to the public uses as a highway by the owner does not in fact become a highway until accepted and used as such. People v. Beaubien, 2 Doug. (Mich.) 256, 285; Plumer v. Johnston, 63 Mich. 165, 172, 29 N. W. 687.

Where a person offers upon certain conditions to throw open a street across his land for the use of the public, an acceptance of such proposition by the proper authorities is a sufficient declaration of its necessity as a public improvement. Long v. Battle Creek, 39 Mich. 323, 330.

The platting, approval and recording of the plat is an offer to dedicate, and becomes effective when accepted. Plumer v. Johnston, supra.

Public user alone, when sufficiently general and long continued will constitute an acceptance of a country road. Adams v. Iron Cliffs Co., 78 Mich. 271, 283, 44 N. W. 270; Nichols v. New Eng. Furniture Co., 100 Mich. 230, 244, 59 N. W. 155.

No one can thrust a grant upon another without his assent. Acceptance of a grant may be presumed when it is beneficial but there can be no conclusive presumption that a grant of land for a public way is such. County of Wayne v. Miller, 21 Mich. 417, 449.

It is not necessary that any formal action be taken by a municipality in order to constitute an acceptance of the highway or street, but making improvements and repairs and user thereof, or any portion thereof are sufficient to constitute acceptance. Crosby v. Greenville, 183 Mich. 452, 461, 150 N. W. 246.

**3936 Public highway; definition, width.** Sec. 20. All highways regularly established in pursuance of existing laws, all roads that shall have been used as such for ten [10] years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used eight [8] years or more, shall be deemed public highways, subject to be altered or discontinued according to the provisions of this act. All highways that are or that may become such by time and use, shall be four [4] rods in width, and where they are situated on section or quarter section lines, such lines shall be the center of such roads, and the land belonging to such roads shall be two [2] rods in width on each side of such lines.

HISTORY: C. L. '15, 4307. This section reenacts Sec. 20 of Ch. 1 of Act 243 of 1881, being How. 1315;—C. L. '97, 4061.

PURPOSE: This section applies to public highways and not to private ways and was designed to cure defects in the laying out and recording of the same where they had been used as a public highway the time fixed by statute. Green v. Beltz, 34 Mich. 512, 513; Stickley v. Sodus Twp., 131 Mich. 510, 518, 91 N. W. 745.

It was not the intention of the legislature to abrogate any public highway which had become such by use. McKay v. Doty, 63 Mich. 581, 583, 30 N. W. 501.

Important consequences flow from the acceptance of a highway by the public authorities and the rule is a salutary one which requires that mere user by individuals shall not render the corporate body liable for such consequences. Chapman v. Sault Ste. Marie, 146 Mich. 23, 29, 109 N. W. 53.

REGULARITY OF PROCEEDINGS: For establishing highway cannot be questioned after 10 years of continuous use. Pellish v. Fordson, 238 Mich. 135, 222 N. W. 80.

HIGHWAYS BY USER: A highway by prescription can be established only by showing uninterrupted and undisputed user for the prescribed period. Detroit v. Myers, 152 Mich. 649, 660, 116 N. W. 620.

Proof of public travel for the statutory period over wild and unoccupied land on different tracks as suited the convenience of travelers, is insufficient to establish a highway by user. Lyle v. Leslie, 64 Mich. 16, 21, 31 N. W. 23.

Public user alone when sufficiently general and long continued will constitute an acceptance of a country road. Adams v. Iron Cliffs Co., 78 Mich. 271, 283, 44 N. W. 270; Dickerson v. Detroit, 99 Mich. 498, 501, 58 N. W. 645; Detroit v. Detroit & M. R. R. Co., 23 Mich. 173, 200.

To constitute a highway by user there must be a definite line and it must be used and worked upon by the public authorities and traveled over and used by the public for ten consecutive years without interruption and the possession thereof by the public must be open, notorious and exclusive. Alton v. Meeuwenberg, 108 Mich. 629, 638, 66 N. W. 571; Chapman v. Sault Ste. Marie, 146 Mich. 23, 29, 109 N. W. 53; Hodges v. West Bloomfield Twp., 186 Mich. 259, 152 N. W. 1050.

Merely passing over the land for any length of time is not alone sufficient to convert it into a public highway. It must have been accepted as such by the public authorities. Irving v. Ford, 65 Mich. 241, 250, 32 N. W. 601; Twp. Highway Comr. v. Riker, 79 Mich. 551, 559, 44 N. W. 955.

It is not essential that every part of a highway should be worked in order to evidence the intention of the public authorities to accept and maintain the entire highway. Neal v. Gilmore, 141 Mich. 519, 527, 104 N. W. 609; Crosby v. Greenville, 183 Mich. 452, 460, 150 N. W. 246.

User of land as a highway for the statutory period conclusively establishes the dedication of

W. 600; Same case, 86 Mich. 567, 568, 49 N. W. 544.

When a highway has been actually extinguished there is no way of renewing it without the same methods of dedication or user which would turn other lands into public ways. Cooper v. Detroit, 42 Mich. 584, 589, 4 N. W. 262.

BURDEN OF PROOF: The burden is upon one who asserts a highway by user to prove it. Neal v. Gilmore, 141 Mich. 519, 527, 104 N. W. 609; Chapman v. Sault Ste. Marie, 146 Mich. 23, 29, 109 N. W. 53.

REBUTTABLE PRESUMPTION: The presumption under this act, that an offer to dedicate a highway covers a four-rod strip, is rebuttable. Smith v. State Hwy. Comr., 227 Mich. 280, 198 N. W. 936.

JURY QUESTION: Whether public use of an alley for period of 10 years established it by prescription, a jury question. Village of Manchester v. Clarkson, 195 Mich. 354, 162 N. W. 115.

ADVERSE POSSESSION AGAINST MUNICIPALITY: Prior to Act 46 of 1907 (see history note to Compilers' § 13964.) title might be acquired by adverse possession of property within the limits of streets. Pastorino v. Detroit, 182 Mich. 5, 11, 148 N. W. 231.

There is a broad distinction between obtaining title of land by adverse possession as against an individual and gaining title to a portion of a city street as against a municipality. In order to gain title by adverse possession to a portion of a public way, the occupancy must be such as to warn the public that the occupant is going beyond his right as an abutting owner and is actually claiming the property as his own. Crosby v. Greenville, 183 Mich. 452, 457, 150 N. W. 246.

LIABILITY FOR PERSONAL INJURIES: Township not liable for injuries from hole in temporary road around point in highway, where railway across the highway was being constructed. Brown v. Byron Twp., 189 Mich. 584, 155 N. W. 544.

**3937 Defective records.** SEC. 21. The commissioner of highways of each township shall cause all roads in his township coming within the purview of the last preceding section, the records of which may be defective, and all others, the records of which are defective, to be ascertained, described and entered of record in the township clerk's office.

HISTORY: C. L. '15, 4308. This section re-enacts a part of Sec. 21 of Ch. I of Act 243 of 1881, being How. 1316;—C. L. '97, 4062.

PERFECTING RECORDS: The duty imposed by this section on the commissioner of highways is a continuing one which he is bound to perform from time to time as cases may arise. Bumpus v. Miller, 4 Mich. 159, 161.

This statute assumes the existence of ways by prescription which ought to be described in the town records and does not contemplate the making of new ways. Action of the commissioner under this section is not evidence of the laying out of a highway or of the existence of a highway laid out by commissioners. Parker v. People, 22 Mich. 93, 95.

**3938 Discontinued highway.** SEC. 22. Every public highway already laid out, or hereafter to be laid out, no part of which shall have been opened and worked within four [4] years after the time of its being so laid out, shall cease to be a road for any purpose whatever.

HISTORY: C. L. '15, 4309. This section re-enacts Sec. 22 of Ch. I of Act 243 of 1881, being How. 1317;—C. L. '97, 4063.

SCOPE: The fact that no part of a highway was opened and worked within four years after being laid out does not prevent the establishment of the highway by user under Sec. 20, but would merely require a user of ten years instead of eight years. Neal v. Gilmore, 141 Mich. 519, 526, 104 N. W. 609.

DISCONTINUANCE: Public highway bordering upon or adjacent to any lake or stream, see Act 341 of 1927, being Compilers' § 3950 et seq.

VACATION OF PLAT: See Compilers' § § 13257 to 13263.

**3939 New highway; damages.** SEC. 23. If any discontinued highway shall be upon lands through which a new highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owner of such lands; and in like manner the benefits accruing to owners of lands by reason of laying out or altering any highway shall be taken into consideration.

HISTORY: C. L. '15, 4310. This section re-enacts Sec. 23 of Ch. I of Act 243 of 1881, being How. 1318;—C. L. '97, 4064.

COMPENSATION: The value of what owner retains plus the damages awarded should equal the value of his property before the highway was laid out. Twp. of Custer v. Dawson, 178 Mich. 367, 371, 144 N. W. 862.

This section is not applicable to award in highway condemnation proceedings. Rogers v. Breisacher, 231 Mich. 317, 204 N. W. 112.

**3940 Award; tender, deposit with clerk, tax levy.** SEC. 24. When any damages may be awarded under the provisions of this chapter in consequence of laying out or altering any highway, before such highway shall be opened, the amount of such damages shall be paid or tendered to the person or persons entitled thereto, or an order on the treasurer of the proper township, city or village, for the amount of such damages, shall be delivered or tendered to such person or persons, and if the owner of any lands upon which any damages may be awarded be unknown, and such lands be not occupied, an order for the amount thereof shall be drawn upon the township treasurer and deposited with the township clerk, payable to the owner of the description

on such state swamp or over-flowed lands, are hereby declared to be public highways, if dedicated to the public use as such, by the owners or lessees of such lands, and entitled to the benefits of the general highway laws of this state.

**3948 Same; entitled to benefit of highway taxes.** SEC. 2. Such public highways, when surveyed, shall be deemed to be a part of the highway system of the township, and county in which located, and entitled to the benefits of the district, township and county highway taxes, for the improvement and construction of highways therein, to the same extent as are the other highways within such districts.

**3949 Expenditures.** SEC. 3. All moneys spent upon such water-ways shall be for the widening, deepening, straightening and cleaning out of the same, and for improving the approaches thereto.

Act 341, 1927, p. 833; Eff. Sept. 5.

AN ACT to prevent the abandonment, discontinuation or alteration of the course of any public highway which borders upon, or is adjacent to any lake, or to the general course of any stream, or the course of any portion of such a highway, or bordering upon a lake or general course of any stream, by the public authorities of any township, village or city, until after the approval thereof by the circuit court of the county in which said highway is situated; and to provide for a notice of application therefor, and a method of hearing in such court, and the method for review of orders made thereon.

*The People of the State of Michigan enact:*

**3950 Highway bordering on lake or stream, discontinuance.** SECTION 1. No public highway which borders upon, or is adjacent to any lake, or the general course of any stream, or crosses any stream, nor any portion of such highway so bordering upon a lake or general course of any stream, shall be discontinued by the order or action of any official or officials of any township, city or incorporated village in this state, until an order authorizing the same shall have been made by the circuit court of the county in which such highway is situated in the manner as hereinafter provided.

**3951 Same; application signed by freeholders.** SEC. 2. Whenever the official or officials having jurisdiction over the highways of any township, village or city in this state shall desire to abandon, discontinue or alter the course of any public highway mentioned in the preceding section, before any action shall be taken by the said public authority or authorities of any township, village or city, an application signed by not less than seven [7] freeholders of the township, village or city in which such highway is situated, shall be made to the circuit court for the county in which such highway is located, setting forth the particular circumstances of the case, an accurate description of the highway proposed to be abandoned, discontinued or altered, together with the reasons therefor, which application shall be verified by one [1] or more of the persons so signing.

**3952 Same; hearing; manner and time of notice.** SEC. 3. Upon the filing of such application it shall be the duty of the presiding circuit judge to make an order fixing a day of hearing thereon, which shall not be less than thirty [30] days from the date of filing such application. Notice of the pendency of such application and the time of hearing thereon shall be given by publishing the same once in each week for three [3] successive weeks, in a newspaper printed and circulated in said county, unless it shall be made to appear by affidavit filed in such case that no such newspaper is published in such county, such notice to contain an accurate description of the highway described in the application and a brief recital of the reasons for its abandonment, discontinu-

ance or alteration. A copy of such notice shall also be posted up in three [3] of the most public places in the township, city or village in which such highway is situated, at least twenty [20] days before the date of hearing fixed thereon, and a copy thereof shall be personally served upon the supervisor of the township or the mayor, president or chief executive officer of the township, city or village in which such highway is situated, at least twenty [20] days before the date fixed for hearing thereon. Proof by affidavit of such publication, posting and service shall be filed in said cause before the date of hearing.

**3953 Same; court order.** SEC. 4. Upon the day of hearing of such application or any adjournment thereof, testimony shall be taken on the part of the petitioner and any person or persons interested in such application, and if it shall satisfactorily appear to the court that there is no reasonable objection thereto, and that it is necessary for the best interest and welfare of the public that such highway be abandoned, discontinued or altered as to its course, as prayed for in such application, or if it shall appear to the court that such highway or any part thereof should remain as then established, an order shall be made and entered in the record of the court in accordance with such determination.

**3954 Same; review by certiorari.** SEC. 5. The proceedings therein shall be subject to review by certiorari upon application of any taxpayer of such township, village or city, as the case may be. Notice of such application for review shall be served upon the persons making such application and the supervisor of the township or the mayor, president or chief executive officer of the city or village in which such highway is situate, within ten [10] days from the date of such order and further proceedings thereon shall be in the same manner provided by law for review by certiorari of judgments of the circuit court.

CERTIORARI: See Compilers' § 15301 et seq.

**3955 Adjacent defined.** SEC. 6. The term "adjacent" as used herein, shall be construed to include any highway, or portion thereof, lying within five [5] rods of the shore of any lake or the general course of any stream.

HISTORY: Am. 1929, p. 525, Act 204, Eff. Aug. 23.

GENERAL HIGHWAY LAW (Cont.)
CHAPTER II
TAXES FOR HIGHWAY PURPOSES



EXPENDITURE IN PLATTED PORTIONS OF UNINCORPORATED VILLAGES
Act 217 of 1925

# EXHIBIT E

# Ordinance No. 18—Protecting Public Streets and Public Places

An Ordinance to protect the streets and public places from obstructions, incumbrance, private appropriation and other encroachments.

The Village of Beulah Ordains:

Section 1. That Lake Street, Benzie Court, Court Place, Beulah Land Drive, Lake View Drive, Highland Drive and any an all streets, alleys, parks and other public places in Crystal City and Beulah View Resort, according to the recorded plat, thereof, are hereby designated and declared to be streets, alleys, parks and public places in and of the Village of Beulah, Benzie County, Michigan, used, accepted and adopted by said Village, subject to the jurisdiction of said Village and full control of said Village for the use and convenience of the public.

Section 2. That said Streets, alleys, parks, and other public places so dedicated, accepted and acquired by said Village and within the corporate limits thereof are, and are declared to be the property of said Village and the President and Marshal of said Village are severally charged with the duty of protecting the rights of the Village thereon.

Section 3. That no person, firm or corporation shall make any excavation in, or place any obstruction or encumbrance in or dig or tear up any soil or turf, or otherwise disturb the condition of any of the streets, alleys or public places in said Village except as herein provided.

Section 4. That no person, firm or corporation shall erect, construct, maintain or continue any building, structure, monuments, fences, boulders, rock gardens, or any signs or placards concerning the use of said streets and public places, or plant any gardens, lawns, grass, trees, shrubbery or do any act therein for their private use or enjoyment without first having applied for and obtained a permit or license from the Common Council of said Village in writing signed by the Clerk of said Village showing, defining and limiting applicant use of said street or public place.

Section 5. That this Ordinance shall not be construed to apply to any person or persons, owning any of the property abutting or any of said streets devoted to residences and not at the time being used for public travel, who shall have applied for and obtained said permit or license so to do, who shall at their own expense improve, beautify, and care for said licensed spaces for the period not required by the Village for public travel and who shall plant lawns and keep same trimmed and mowed or/and plant trees or shrubbery and ornament said spaces and who shall in no way assert any ownership thereto, or do any act inconsistent with the full rights of said Village in said streets as public highway, and said spaces so licensed while not used as public highways, for the purposes of this Ordinance shall be deemed parks and any molestation, defacement, or injury to the improvements in said licensed spaces wrongfully or unnecessarily done by any person shall be a violation of this Ordinance.

Section 6. Any person or persons violating any of the provisions of this Ordinance shall on conviction thereof, be punished by a fine of not to exceed $50.00 and the cost of prosecution or by imprisonment in the \County jail for a term of not to exceed 90 days or both, such fine and imprisonment in the discretion of the Court.