

GOVERNMENTAL LAW LEGAL ALERT

Court of Appeals confirms MCL 247.190 protects all public right of ways from adjacent property owner's claims of title.

Karrie A. Zeits, Attorney

A recent unpublished opinion of the Court of Appeals has affirmed a shield to claims by neighboring property owners that they have acquired title or rights in public rights of way of Michigan road agencies, including cities and villages. In *Haynes v Village of Beulah*, the plaintiffs claimed that they had acquired title to portions of two village streets based on encroachments within the streets, including landscaping rocks, trees, and some railroad ties. The Village asserted MCL 247.190 as a defense, which provides that title cannot be acquired in "public highways" by virtue of encroachments.

The Village won at the trial court level, and the plaintiffs appealed. The plaintiffs' main argument was that village streets were not "public highways" and therefore, MCL 247.190 did not bar their claim. The Court of Appeals in a per curium decision disagreed. In doing so, the Court of Appeals affirmed the historical broad interpretation of "public highways" as being a "generic name for all kinds of public ways, including county and township roads, streets and alleys, turnpikes and plank roads, railroads and tramways, bridges and ferries, canals and navigable rivers." This broad definition clearly includes village streets. Another important principle the Court affirmed was that unimproved portions of platted streets are "public highways" entitled to protection under MCL 247.190.

This opinion is a particularly important opinion in the wake of *Mason v Menominee*, 282 Mich App 525; 766 NW2d 888 (2009) and *Waisanen v Superior Township*, 305 Mich App 719, 854 NW2d 213 (2014), two recently published opinions of the Court of Appeals that held that MCL 600.5821(2) could not be used as a bar to adverse possession or boundary by acquiescence claims against municipal property. In the wake of *Haynes*, local road agencies may comfortably rely on MCL 247.190 to fend off claims to title within their roadways even though MCL 600.5821(2) may no longer be relied upon. Although the opinion is currently an unpublished opinion, the village has requested publication to give solid precedential value to this important decision.

Please click here to link to view the opinion:

http://publicdocs.courts.mi.gov:81/opinions/final/coa/20141021_c317391_42_317391.opn.pdf



Karrie Zeits is a shareholder in Smith Haughey's Traverse City office and has specialized in municipal law in excess of 14 years. Karrie represented the Village of Beulah at both the trial and appellate court level in this case. She can be reached at 231.486.4521 or kzeits@shrr.com.