STATE OF MICHIGAN
IN THE SUPREME COURT
(On Appeal from the Michigan Court of Appeals)

_____

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

Plaintiffs/Counter-Defendants/
Appellees,

SC: 139394
COA: 274920
Washtenaw CC: 05-000786-CH
Hon. Donald E. Shelton

v

TOWNSHIP of LIMA,

Defendant/Counter-Plaintiff/
Appellant,

and

JEFFREY V. MUNGER,

Defendant.

_____/

PLAINTIFF/COUNTER-DEFENDANT/APPELLEE FLORENCE BEACH'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

PETER C. FLINTOFT (P13531)
KEUSCH, FLINTOFT & CONLIN, P.C.
119 South Main Street
P.O. Box 187
Chelsea, Michigan 48118
(734) 475-8671

GARY P. SUPANICH (P45547)
GARY P. SUPANICH, PLLC
116 E. Washington, Suite 260
Ann Arbor, Michigan 48104
(734) 276-6561

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COUNTER-STATEMENT OF APPELLATE JURISDICTION

Appellee Florence Beach ("Ms. Beach") agrees that the Statement of Appellate Jurisdiction set forth in Appellant Township of Lima's brief is correct.

COUNTER-STATEMENT OF THE QUESTIONS FOR REVIEW

I. MUST A PLAINTIFF WHO SEEKS TO ESTABLISH AN ADVERSE POSSESSION CLAIM THAT WOULD AFFECT PROPERTY IN A RECORDED PLAT FILE A CLAIM UNDER THE LAND DIVISION ACT, MCL 560.101 *ET SEQ*., IF THE PLAINTIFF IS NOT EXPRESSLY REQUESTING THAT THE PLAT BE VACATED, CORRECTED OR REVISED?

Plaintiff/Counter Defendant-Appellee Florence Beach answers:	"No"
Defendant/Counter Plaintiff-Appellant Township answers:	"Yes"
The Washtenaw Circuit Court answered:	"No"
The Court of Appeals answered:	"No"
This Court should answer:	"No"

II. ASSUMING *ARGUENDO* THAT A PLAINTIFF WHO SEEKS TO ESTABLISH AN ADVERSE POSSESSION CLAIM THAT WOULD AFFECT PROPERTY IN A RECORDED PLAT MUST FILE A CLAIM UNDER THE LAND DIVISION ACT, MCL 560.101 *ET SEQ*., SHOULD THE STATUTE BE APPLIED TO THE PRESENT CASE WHERE IT WOULD ABROGATE OR IMPAIR FLORENCE BEACH'S VESTED RIGHTS TO THE SUBJECT PROPERTY ACQUIRED BY ADVERSE POSSESSION. ALTERNATIVELY, SHOULD THIS COURT'S DECISION BE APPLIED PROSPECTIVELY ONLY?

Plaintiff/Counter Defendant-Appellee Florence Beach answers:	"Yes"
Defendant/Counter Plaintiff-Appellant Township did not address this question.	
The Washtenaw Circuit Court did not address this question.	
The Court of Appeals did not address this question.	
This Court should answer:	"Yes"

III. ASSUMING *ARGUENDO* THAT A PLAINTIFF WHO SEEKS TO ESTABLISH AN ADVERSE POSSESSION CLAIM THAT WOULD AFFECT PROPERTY IN A RECORDED PLAT MUST FILE A CLAIM UNDER THE LAND DIVISION ACT, MCL 560.101 *ET SEQ*., AND THAT THE STATUTE SHOULD BE APPLIED RETROACTIVELY TO THIS CASE, SHOULD PLAINTIFF FLORENCE BEACH BE ALLOWED TO AMEND HER COMPLAINT TO ALLEGE A CLAIM UNDER THE LAND DIVISION ACT?

Plaintiff/Counter Defendant-Appellee Florence Beach answers:	"Yes"
Defendant/Counter Plaintiff-Appellant Township did not address this question.	
The Washtenaw Circuit Court did not address this question.	
The Court of Appeals did not address this question.	
This Court should answer:	"Yes"

INTRODUCTION

This is a private property rights case involving the Beach family's adverse possession of "streets" in a dedication for "Harford Village" drawn in an 1834 plat and recorded in 1835. The plat is adjacent to Jackson Road, a state public road, in the Township of Lima ("the Township"). The plat established 68 lots in six blocks and five streets ("North," "South," "East," "West" and "Cross"). Thirty-four lots are north of Jackson Road, with lots 1 through 14 in Block I, lots 1 through 14 in Block II, and lots 1 through 6 in Block III. Plaintiffs own all of Blocks II and III in the plat. It is undisputed that the dedication was never publically accepted, and the dedicated streets, with the exception of "West Street," which later became a county public road named Lima Center Road, were never developed or used as streets. Over 100 years ago, the Beach family acquired title to streets dedicated in the plat ("North," "Cross," and "East") by adverse possession. The subject property thus has formed part of the Beach Farm as far back as the end of the 19th century. Plaintiff Florence Beach ("Ms. Beach") is the holder of a life estate and owner of a remainder interest with her siblings, Cynthia B. Guthrie, Lillian B. Mumaw, Ann Jaeckle (who died during the pendency of this action) and Dwight E. Beach, Jr. The Beach farm is legally described as acreage, numbered lots and the "adjacent streets" of "Harford Village," which have been completely and continuously fenced and possessed for well over 100 years.

In 1954, the Township received a conveyance of Lots 4 and 11 of Block I in the 1835 plat, converting an abandoned church on one of the lots into its Township Hall. Nearly 50 years later, in 2003 and 2004, the Township twice sought to purchase property from Ms. Beach for the purpose of constructing a proposed fire station. When Ms. Beach rebuffed the Township's offer to buy part of the Beach Farm, the Township purchased Lots 5, 6, 7, 12, and 13 of Block I of the 1835 plat for "Harford Village," which adjoined the Township Hall and which were bounded by

the east and south by the fences of the Beach Farm. Then, in August 2004, without any notice to Ms. Beach, the Township Supervisor, Mr. Kenneth Unterbrink, ordered the Township's contractor to bulldoze a longstanding fence on the south line of the Beach Farm and push the debris down on the Beach Farm. When she discovered the breach of her fence, Ms. Beach confronted Mr. Unterbrink, who declared that the Township was going "to open the streets" laid out in the 1835 plat. At that point, Ms. Beach retained counsel and demanded that the Township respect her fences and property lines.

After the Township responded by claiming that the streets were going to be "opened," Ms. Beach filed suit to quiet title on July 25, 2005 in Washtenaw Circuit Court to the lands possessed by her family, as well as an injunction against further trespass. (37a) The Township filed a counterclaim to quiet title with regard to its alleged right to use the "streets" in the 1835 plat on the ground that the "streets" had not been vacated in accordance with § 221 through § 229 of the Land Division Act ("LDA"), MCL 560.221 through 560.229. By order entered on November 17, 2005, Cynthia Guthrie, Ann Jaekle, Lillian Mumaw and Dwight Beach, Jr. were added as necessary parties to defend against the Township's counterclaim for quiet title.

Cross-motions for summary disposition were then filed. The Township filed a motion for summary disposition under MCR 2.116(C)(8) and (10) claiming that the sole relief available to Ms. Beach is an action to amend and vacate portions of the 1835 plat pursuant to the provisions of the LDA, MCL 560.221 through 560.229. Ms. Beach filed a motion for summary disposition under MCR 2.116(C)(8), (9) and (10) on the basis that there was no genuine issue of material fact as to her quiet title action and that she was entitled to an injunction against trespass by the Township. On February 16, 2006, Ms. Beach moved for leave to amend her Complaint to add a

count to amend the plat in the event that her motion for summary disposition was denied but the Township's motion was granted.

The cross-motions for summary disposition were heard by the trial court, the Honorable Donald E. Shelton presiding, on April 26, 2006. Judge Shelton denied the Township's motion from the bench and by order entered on May 26, 2006, but took Ms. Beach's motion under advisement, ordering an immediate trial on her quiet title action pursuant to MCR 2.116(I)(3).

A trial on Ms. Beach's quiet title action was conducted on June 2, 2006 and July 6, 2006, and Judge Shelton also personally visited the site with counsel. (235a) On November 17, 2006, Judge Shelton issued an Opinion Granting Summary Disposition to Plaintiff, finding that title to the subject property had vested in the Beach family more than one century ago by virtue of adverse possession. (14a) A Judgment was entered on December 13, 2006 quieting title to the land at issue in Plaintiffs, as owners, "free and clear of any right, title, claim or interest of the Defendants, TOWNSHIP OF LIMA and JEFFREY V. MUNGER, and their predecessors in title."

On appeal, the Court of Appeals (Wilder, P.J., Murphy and Meter, JJ) affirmed Judge Shelton's order granting summary disposition to Ms. Beach on her quiet title action and the resulting Judgment. *Beach v Township of Lima*, 283 Mich App 504; 770 NW2d 386 (2009) (24a) Specifically, the Court of Appeals held that the Beach family acquired title to the "streets" in dispute by virtue of adverse possession, and thus Ms. Beach did not have to file an action under the LDA to vacate, correct or revise the 1835 plat. Thereafter, the Court of Appeals denied the Township's motion for reconsideration. This Court should now affirm the Court of Appeals' opinion affirming Judge Shelton's summary disposition order and Judgment.

COUNTER-STATEMENT OF FACTS

The principal facts are undisputed. Charles Harford and Sophrona Harford executed a Plat for "Harford Village" on July 10, 1834, and it was recorded on July 24, 1835. (263a) As Judge Shelton found in his Opinion Granting Summary Disposition to Ms. Beach:

> The Plat is divided into six separate blocks appropriately labeled as lots [sic] I, II, III, IV, V and VI. It maps out 68 lots within these blocks and shows three streets running North and South and two others running East and West. The Plat designates the thoroughfares as "North Street', "West Street" [,] "East Street" and "Cross Street," and also includes Jackson Road. Jackson Road is a state public street running East and West through the center of the plat dividing the 68 lots evenly into 34 on the North and 34 on the south [sic] of Jackson Road. West Street is currently a Washtenaw County public road running North and South creating the westerly boundary of the plat. [15a-16a]

In pertinent part, Judge Shelton found:

> The first conveyance of property from the Harford Village Plat was to [sic] General William G. Beach on November 1, 1853. This deed conveyed all of the property exempting only certain numbered lots. None of the streets were exempted. On December 8, 1863, Lucinda Harford deeded four acres in the Southwest Corner of Section 15, to Irving Storm. However, lots 3, 4, 5, 8, 9, 10, 11 and 12 in Block I were not included. In 1881, the Storm property ascended to the Beach Family, with the exceptions of the lots owned by the defendants, as well.
>
> In 1897, the Beach family acquired title to another piece of land which had originally been exempted. That piece of land is described as "a [sic] piece of land in the Village of Herford [sic] lying between Blocks 1 and 2, being 4 rods East and West and 16 rods North and South, laid out and designed in the original Plat of the Village as a Street." This is shown on the plat as a portion of "Cross Street". The Beach family also acquired lots 1 through 14 in Block 2 at this same time.
>
> In 1954 [,] almost 60 years later, the defendant Township purchased lots 4 and 11 in Block I. In 2004, fifty years later, it purchased lots 5 through 7 and 12 through 14 in Block I. Now, they seek to build a new township hall and fire station on that property but also seek access to lots 4, 5, 6, and 7 by using the old platted "North", "Cross", and "East" streets as ingress and egress.
>
> . . . The plaintiff's property is most commonly known as "the Beach Farm". The Beach Farm which has significant historical value in the County of Washtenaw comprises the majority of the property of Harford Village. It includes the land North and East of the Plat as well as lots 1 through 14 of Block II, and Lots 1 through 6 of Block III. [16a-17a]

At trial, Ms. Beach testified to her family's long time ownership and maintenance of line fences, as related to her by her father, the now deceased, General Dwight D. Beach. General Beach was born on the farm. After the family moved to Chelsea for high school, General Beach went to West Point and then fought in the South Pacific during World War II and later in Korea. Afterwards, General Beach visited the farm whenever he could, and when he retired in 1968 as a four-star general in the United States Army, he returned to the farm with his wife and daughter, Florence Beach, who was 14 years old at the time. (202a-203a)

An aerial photo submitted by the Township at trial accurately shows the dense tree line, the agricultural use of North Street, and the Beach buildings within both "North Street" and "East Street." (265a) Photos, including an aerial photo, taken contemporaneously with the breach of the fence by the Township's bulldozer were submitted at trial showing the sheer drop down from the Township's lot into "North Street," the massive tree lines on the property, and the agricultural use of the land. (125a-140a, 264a) An old orchard is planted in what was drawn as "Cross Street." (205a) Previously, wire fencing was put around the orchard so the area could be used also be used as a pig lot. (206a) Farm buildings, some over 100 years old, had also been built into "North Street," "Cross Street," and "East Street." (206-207a)

In 2003, the Township attempted to purchase property from Ms. Beach. Initially, the Township treasurer attempted to convince Ms. Beach to sell the property immediately north of the Township Hall, which included one of the strips of land at issue. (207a) She declined. Then, in 2004, the Township Supervisor, Mr. Unterbrink, tried to purchase 10 acres to the east of the farm for the Township. Ms. Beach again declined. (207a-208a) At no point did the Township officials mention or discuss the existence of streets or roadways in the plat for Harford Village. (208a) When walking her farm in August 2004, Ms. Beach discovered the Township's breach of

her property line. (208a) She then met with the Township supervisor, who announced the Township's right to bulldoze into the "streets." (209a) During cross-examination, Ms. Beach steadfastly maintained her family's 153 years of lawful title and her family's hostile, adverse, notorious, open and continuous possession of the land in dispute. (209a)

The next witness, Veryl Steinaway, then 79 years old, established exclusive and adverse possession in every sense from his own personal knowledge for more than the required 15 years prior to the 1954 deed for the Township. (217a-219a) Born in 1926 on the Beach Farm where his father was a tenant farmer from the 1920s to 1967, Mr. Steinaway was raised and worked on the farm. Attending school next door to the vacant church (which later became the Lima Township Hall in 1954), Mr. Steinaway described the countryside and the complete absence of any indication of "Harford Village" or its "streets" on the surrounding Beach Farm. Even after his marriage, Mr. Steinaway continued to help his father on the farm until 1967. Before giving live testimony in this case, Mr. Steinaway walked the Beach Farm line fences. (218a) Mr. Steinaway identified these fences as being the same as existed from the 1930s. (218a) He also testified that the area that was drawn for "Cross Street" was used for an orchard and pig enclosure, and that the huge walnut and hickory trees behind the present day Township Hall on the Beach side of the fence "are still there" and that there "still are lots of trees" along the fence. (219a-220a)

David Luick, the owner of the farm south of the Beach Farm, also testified that he has occupied land dedicated for a street ("South Street") in the 1835 plat of Harford Village, that the "streets" have never been opened, and that he and his predecessors in interest have farmed the land without objection. (223a-224a). Another witness, Mr. Ronald Satterthwaite, testified that there was no mention of "streets of Harford Village" when he applied for a conditional use

permit, and that he was even required by the Township to fence off his property to cut off any access to any purported street. (226a-227a)

Craig Eckfeld, a registered surveyor, identified the trees inside the Beach fences as being well over 100 years old, based upon historical data compiled by the Washtenaw County Road Commission surveyors and the age of the fences. (228a-229a) The survey shows all significant landmarks, trees and fences, both old and new. (228a-229a, 271a) The survey is the final product based upon the survey work sheet and work sheet of fence alignments. (271a) Mr. Eckfeld verified the 1862 deed in the Beach family's chain of title to "Cross Street," and he precisely laid out the dimensions of the deed from the daughter of the plat proprietor, Ms. Lucinda Harford, in 1863, as necessarily including "North Street." (230a, 266a-270a)

In his testimony, Mr. Unterbrink, the Township Supervisor, admitted that at the time of the 2004 purchase from Joanne L. Wallace of Lots 5, 6, 7, 12, and 13 of Block I of the Plat for "Harford Village, there was no physical evidence of any road or street adjacent to the Wallace property and that the Wallace survey showed no streets. (243a-244a) Mr. Unterbrink acknowledged that the line fences were in place, but he would not acknowledge that they were on the property line and denied that the fences were visible. (244a-246a, 253a) However, he did acknowledge that the existing Township lots had been filled and that there was a considerable drop off behind the fence down to the Beach property, and that the "streets" are at a different elevation than the Township lots. (253a-254a)

Following the trial, Judge Shelton issued an Opinion Granting Summary Disposition to Ms. Beach, ruling in pertinent part as follows:

> . . . The first issue is whether Court has jurisdiction to consider the evidence in this case as an action to quiet title as filed in the complaint or, if it should have been filed as an action to vacate, correct or revise a plat pursuant to the Land Development Act [sic], MCLA 560.221, as argued by the defense. At the time of the creation of this plat in 1834,

the Territorial Act of April 12, 1827 applied. The Land Development Act [sic] of 1978 ("LDA") would not come into existence for another 150 years [sic].[1] At the time of the Beach conveyances in 1853, 1881, and 1897 the LDA still had not been enacted. Nevertheless, in 1989, the Michigan Supreme Court held that the 1978 amendment to the LDA operated retroactively unless the offer to dedicate was formally withdrawn prior to December 22, 1978. *Vivian v Roscommon Co. Bd of Rd Comm'rs,* 433 Mich 511 (1989).

The Land Development Act [sic] creates a rebuttable presumption of acceptance of any dedication ten years after the date the plat was first recorded. MCLA 560.255b. The plat in this case was recorded in 1911 by the clerk to the Auditor General is now recorded with the Washtenaw County Clerk in Liber F, page 340 of the Washtenaw County records. Therefore, it must be presumed accepted unless the plaintiff can show that the offer of dedication was formally withdrawn. It is undisputed that there is no formal withdrawal of the offer of dedication in this case.

Since there was no formal withdrawal, the burden shifts to the plaintiffs to rebut any statutorily created presumption of acceptance of these streets as created by the LDA. *Vivian v Roscommon, supra.* Plaintiffs may rebut the presumption by showing under common law that they, as successors to the land, or the original grantor took steps to withdraw the offer prior to December 22, 1978. *Kraus* v *Dep't of Commerce,* 451 Mich 420 (1996). The plaintiff may also show that under the doctrine of common law, the offer was no longer valid when the LDA was enacted. *Kraus v Dep't of Commerce,* 451 Mich 420 (1996). The Court finds that both of these exceptions apply and that plaintiffs have met their burden.

The grantee of this land took steps to withdraw the dedication when they included in the subsequent deed a clause which granted to the Beach family all the streets in the plat. The Court also finds that the Beach Family took steps after they purchased the property to withdraw the offer of dedication. These steps were taken well before the 1900s. In fact, the testimony was clear that since their initial purchase of this farm in 1853, they have maintained the disputed streets as woods or trails, incorporated them into their farm, and placed a fence around them.

Based on the same rationale, the Court also finds that the offer of dedication was no longer valid well before the 1978 enactment [sic]. This property was purchased in 1853, 1881 and 1897. Assuming for purposes of argument that this was a public dedication, the evidence clearly shows that the township never took any action to accept the offer to dedicate. Defendant did not develop the roads, defendant did not formally accept the roads through resolution or ordinance, and defendant did not spend any public funds to create or improve them. More than 81 years had elapsed prior to enactment of the LDA and plaintiffs had continuously used the streets for their sole and exclusive purposes. The Land Development Act [sic] does not apply under these circumstances.

[1] It should be noted that the Land Division Act was formerly known as the Subdivision Control Act under 1967 PA 288, which took effect on January 1, 1968. The 1996 amendment to the Subdivision Control Act, 1996 PA 591, which took effect on March 31, 1997, renamed the Act as the Land Division Act.

The Court finds that the plaintiffs properly filed this action as an action to quiet title and will decide the respective rights of the parties based on equity.

The Court must determine the nature of the dedication in the plat, i.e., whether the Harford Plat created an offer for a private dedication or for a public dedication. A valid dedication for public purpose requires that a recorded plat designate the areas for public use and evidence of a clear intent by the plat proprietor to dedicate the areas to public use, and then acceptance by the proper public authority. *Kraus v Dep't of Commerce,* 451 Mich 420 (1996). The Harford Plat fails to designate whether any of the roads listed are dedicated to the public or dedicated only for the use of the subdivision lot owners as a private dedication. The words written on the plat are silent as to who has a right to use these streets.

Because the grantors do not indicate in writing their intent, the Court must determine to whom the grant was intended. Although, there is no direct case on point for making this determination, *Schurtz* v *Wescott,* 286 Mich 691 (1938) is instructive. In *Schurtz,* the Michigan Supreme Court made a similar determination regarding a plat which had expressly dedicated the streets to the public based on the words in the plat, but was silent on the intent of the dedication of the parks. The Court held that the parks were dedicated to the use of the lot owner as private dedication because the Plat did not explicitly indicate that it was a public dedication. Similarly, in this case, the Harford Flat is silent as to the intended beneficiaries of the dedicated streets. The plat simply designates certain thoroughfares as streets with no indication of whether they are for public or private use. Therefore, the Court finds that the "North", "Cross" and "West" streets are private dedications set aside for the use of the lot owners within Harford Village.

In Michigan, private dedications are valid. *Little v Herschmann*, 469 Mich 553 (2004). In *Little,* the Supreme Court ruled that a private dedication within a plat is valid if the plat was approved and recorded before or after the statute specifically allowed private dedications pursuant to MCL 560.101 *et seq*. In *Little*, property owners had previously obtained a judgment against Cheboygan County Road Commission vacating the rights of the public to use several of the alleys. The alleys had previously provided back lot owners access to a park. The property owners of those alleys blocked them to prevent use by the back lot owners. Several of the back lot owners filed suit claiming they had a right to use the property because the 1913 plat publicly dedicated the alleys for their use and created a privately dedicated use of the park. The Court's analysis in that case began with a historical overview of the existence of private dedications to determine if they existed in 1913.

The Supreme Court reasoned that the Auditor General considered – private dedications to be legal, recognized them as such and enforced them from the inception of Michigan's statehood until the enactment of the statutes implicating their existence. The Supreme Court cited *Schurtz v Wescott,* 286 Mich 691 (1938) as the example of this recognition and enforcement. Thus, in *Little,* the Supreme Court held that these private dedications were in fact irrevocable easements. They became irrevocable upon sale of the

affected lot. It reasoned that a private dedication is effective upon the sale of a lot because it is reasonably assumed that the value of the lot is enhanced by the dedication and the value is reflected in the sale price.

The Township in this case therefore stands in the shoes of any other lot owner in the Harford Plat seeking to use property as streets. The owners of the land in a platted subdivision acquire a private right to use of the streets as laid down in the plat, regardless of whether there was a sufficient dedication and acceptance to create public rights in the dedication. *Pulcifer v Bishop,* 246 Mich 579 (1929). The Township as a lot owner is the beneficiary of an irrevocable trust, assuming that it has not been revoked by the deed granted to the plaintiffs. [17a-21a]

Judge Shelton then made the following factual findings as to the issue of adverse possession:

Although such a trust is irrevocable as to the original grantor, it is subject to a claim of adverse possession. Therefore, the final issue is whether the plaintiffs have proven that they adversely possessed these privately dedicated streets to the detriment of the remaining lot owners including the Township. Title by adverse possession is obtained where the claimant's possession is actual, visible, open, notorious, continuous, and uninterrupted for the statutory period and under color or claim of right. *Burns v Foster,* 348 Mich 8 (1957). Adverse possession is established by the facts of each case and the character of the premises. *Whitehall Leather Co v Capek,* 4 Mich App 52 (1966).

In this case, the evidence clearly shows, by observation, very large trees which are at least 100 year old growing in the middle of the purported streets. In fact, an aerial photo with the plat superimposed clearly shows that the Beach family has used this property without regard to the street lines in the plat for many, many years. There are maintained trails in the wood which go the middle of Cross Street and North Street. Although the Lima Township Supervisor testified that there was no fence on the property, the Court's view of the property revealed otherwise. Additionally, photos show that the Plaintiffs and their predecessors have used the property under the streets as their own property for many, many years. They have planted and farmed the land under these alleged streets. In other parts they have erected a fence in what was originally described as a street. The Court finds that the Plaintiffs have adversely possessed this land to detriment of all other landowners in the Plat. Title is quieted to the plaintiffs.

The Court notes that even if this were determined a public a dedication, it could be adversely possessed. *Hill v Houghton Twp,* 109 Mich App 614 (1981) is dispositive of this issue. In *Hill,* the Plaintiff sued the Township seeking to acquire title to a "public square" through adverse possession. The Court of Appeals held that a private party can maintain a successful adverse possession case against a municipal entity if the adverse possession took place prior to 1907. *Hill* at 617. In this case, the Beach Family would have acquired title to all of the streets with exception of "Cross Street" prior to 1907. The

> Harfords, however, withdrew any offer to dedicate Cross street when they specifically delineated it as a property purchased in the deed to the Beach Family.
>
> To the extent that it is necessary the Harford Plat shall be corrected to remove Cross, North and East Street[s] and vests title in favor of the plaintiffs. [21a-23a]

On appeal, the Court of Appeals, in an opinion authored by Judge Wilder, rejected the Township's contention that Plaintiffs were required to bring an action under the LDA. *Beach, supra*, 283 Mich App at 504. Specifically, the Court of Appeals, noting that the Township has an interest solely by virtue of its ownership of lots within the 1835 plat, held that a person can adversely possess an easement created by private dedication in a plat recorded before January 1, 1968, and that there is no requirement to bring an adverse possession claim under the LDA. In affirming Judge Shelton's findings of fact and conclusions of law, the Court of Appeals thus stated:

> The evidence indicated that improvements were made to the areas in question. These longstanding improvements would give a titleholder notice that one or more lot owners were adversely possessing the area. For example, plaintiffs' barn partially blocked the area known as North Street. Plaintiffs maintained crops and private trails in the areas in question, planted trees, and maintained fencing along North and Cross Streets. These activities and structures were further evidence of acts or uses inconsistent with any right to use the disputed property as a road. In light of the strong evidence of plaintiffs' uses inconsistent with the use of the areas as roads, we conclude that the trial court did not clearly err by finding that plaintiffs established by clear and cogent proofs of possession that was actual, visible, open, notorious, exclusive, continuous and uninterrupted for the statutory 15-year period, hostile, and under cover of claims of right, and judgment in favor of plaintiffs was properly granted. [283 Mich App at 525].

SUMMARY OF THE ARGUMENT

This is a quiet title action based upon a claim of adverse possession of land that was dedicated in an 1835 plat for streets of "Harford Village." The dedication was never publically

accepted, and the "streets" in dispute were never used or developed, but were completely and continuously fenced and adversely possessed by the Beach family for over 100 years. While the proprietor of the plat was estopped from revoking the dedication that created an easement in favor of the lot owners for the use of the streets, the Beach family was not precluded from adversely possessing the land dedicated for the "streets" at issue. As a result, no judicial action was necessary for title in "North, Cross and East Streets" to vest in the Beach family by virtue of adverse possession. Accordingly, Ms. Beach properly filed a quiet title action in 2004 based upon a claim of adverse possession after the Township, as a lot owner in the 1835 plat, trespassed on her property. Because the Beach family long ago acquired title to the land in dispute by adverse possession, Ms. Beach did not have to file a claim under the LDA since she did not seek to vacate, correct or revise the plat. Requiring Ms. Beach now to file a claim under the LDA runs contrary to the principles of statutory interpretation because there is nothing in the statutory provisions requiring that a claim be filed under the LDA and reading such a requirement into the LDA violates the separation of powers doctrine. Further, such an interpretation abridges statutory authority directly governing adverse possession claims in violation of the rule of *in pari materia,* contravenes well-established common-law principles regarding adverse possession, and abrogates Ms. Beach's vested rights to the subject property. Alternatively, any decision requiring that a claim be filed under the LDA should be given prospective effect only; if not, then Ms. Beach should be allowed the opportunity to amend her Complaint to allege a claim under the LDA, as she previously sought to do in the trial court.

ARGUMENT

I. A PLAINTIFF WHO SEEKS TO ESTABLISH AN ADVERSE POSSESSION CLAIM THAT WOULD AFFECT PROPERTY IN A RECORDED PLAT DOES NOT NEED TO FILE A CLAIM UNDER THE LAND DIVISION ACT, MCL 560.101 *ET SEQ.*, IF THE

PLAINTIFF IS NOT EXPRESSLY REQUESTING THAT THE PLAT BE VACATED, CORRECTED OR REVISED.

A. Standards of Appellate Review

Whether Ms. Beach was required to bring a claim under the LDA is a question of law, which is reviewed de novo. *Martin v Beldean*, 469 Mich 541, 546; 677 NW2d 312 (2004).

In determining an issue of statutory interpretation, this Court's primary aim is to ascertain and give effect to the intent of the Legislature. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003); *Frankenmuth Mutual Ins v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). The best source for determining legislative intent is the specific language of the statute. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). Thus, when resolving an issue of statutory interpretation, this Court examines the language of the statute, and if the statutory language is clear and unambiguous, this Court assumes that the legislature intended its plain meaning and enforces the statute as written. *Roberts v Mecosta County General Hospital*, 466 Mich 57, 63; 642 NW2d 663 (2002). Nothing will be read into a clear statute which is not within the manifest intention of the Legislature as derived from the statutory language. *Id.*

Actions to quiet title are equitable, and therefore reviewed de novo; the circuit court's factual findings are not reversed unless they are clearly erroneous. *Gorte v Dep't of Transportation*, 202 Mich App 161, 165, 171; 507 NW2d 797 (1993); MCR 2.613(C). This Court reviews motions for summary disposition de novo as questions of law. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005).

B. Legal Discussion

(1) The Beach Family Acquired Title To The Streets In Dispute Over 100 Years Ago By Adverse Possession.

(**a**) **<u>The dedication in the 1835 plat created an irrevocable easement in favor of the lot owners that was subject to adverse possession</u>.**

Even before statehood, plat legislation was enacted in Michigan to provide for dedication of land for some public use. *Martin, supra*, 469 Mich at 543. In *Martin* at 544, n 6 and its companion case, *Little v Hirschman*, 469 Mich 553, 558 n 4; 677 NW2d 319 (2004), this Court noted:

> The law recognized two types of dedications: statutory dedications and common-law dedications. *Alton v Meeuwenberg*, 108 Mich 629; 66 NW 571 (1896). "The effect of a dedication under the statute has been to vest the fee in the county, in trust for the municipality intended to be benefited, whereas, at common law, the act of dedication created only an easement in the public." *Grandville v Jenison*, 84 Mich 54, 65; 47 NW 600 (1890).

Martin further noted that MCL 560.253(1) provides:

> When a plat is certified, signed, acknowledged and recorded as prescribed in this act, *every dedication, gift or grant to the public or any person, society or corporation* marked or noted as such on the plat shall be deemed sufficient conveyance to vest the fee simple of all parcels of land so marked and noted, and shall be considered a general warranty against the donors, their heirs and assigns to the donees for their use for the purposes therein expressed and no other. [469 Mich at 547 (Emphasis in original.)] [2]

The present case concerns a dedication in a plat recorded in 1835 for "Harford Village" governed by the Territorial Act of 1827. 2 Territorial Laws, p 577.[3] The offer of public

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[2] Section 253(1) of the LDA, 1978 PA 556, formerly known as the Subdivision Control Act, 1967 PA 288, as amended, tracks the language of previous acts governing plats in the State of Michigan since 1839. See 1839 PA 91; 1859 PA 35; 1885 PA 111; 1887 PA 309; and 1929 PA 172.

[3] The Territorial Act of April 12, 1827 governing plats had no requirement of public approval or even public acceptance of streets or other "commons." Rather, the recording of the plat was deemed by law as a conveyance of the fee to the local unit of government. As noted in *Kirchen v Remenga*, 291 Mich 94, 111; 288 NW 344 (1939):

> The territorial act of March 12, 1821 governing town plats, provided that when made, acknowledged and recorded in accordance with the statute, they "shall be deemed a sufficient conveyance, to vest the fee of such parcels of land as are therein expressed, named or intended to be for public uses, in the county in which such town lies, in trust to and for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever." 1 Territorial Laws, p 816.

dedication in a plat must be accepted by the public before the dedication is effective. See *Kraus v Michigan Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996); *Vivian v Roscommon Co Bd of Rd Comm'rs*, 433 Mich 511, 515-517; 446 NW2d 161 (1989); *Marx v Michigan Dep't of Commerce*, 220 Mich App 66, 73; 558 NW2d 460 (1996).[4] If not publicly accepted, a dedication may lapse or be withdrawn by the proprietor or grantor of the plat. *Kraus, supra* at 427, 431; *Marx, supra* at 79-80. An offer is withdrawn when the proprietor or his or her successor uses the property in a manner inconsistent with public ownership, such as constructing buildings and fences and planting trees. *Kraus, supra* at 431-432. In *Vivian*, this Court found that the property owner's occupancy of a dedicated alley by erecting a wooden and wire fence and by planting the area with large trees and underbrush for forty years was inconsistent with public ownership. 433 Mich at 520. Thus, in *Vivian,* this Court held that the dedication was withdrawn before the effective date of the Subdivision Control Act, rebutting the presumption of acceptance as provided in the Act.

But even if there is no public acceptance of the dedication, or the dedication lapsed or was withdrawn, private rights nonetheless accrue to the purchaser of property in a recorded plat as a common-law private dedication. As stated by this Court in *Schurtz v Wescott*, 286 Mich 691, 695-696; 282 NW 870 (1938), quoting *Pulcifer v Bishop*, 246 Mich 579; 225 NW 3 (1929):

> [T]he mere making sale of lots with reference to a map or plat prepared or

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> The same language was continued in Section 2 of the act of April 12, 1827 (2 Territorial Laws, p 577).

See also *Martin, supra,* 469 Mich at 544 n 4.

[4] "[T]he well-established rule is that a valid dedication of land for a public purpose requires two elements: a recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use, and acceptance by the proper public authority." *Kraus, supra,* 451 Mich at 424.

adopted by the owner does not constitute an irrevocable dedication to the public, but amounts to a mere offer of dedication which may be withdrawn if not accepted by the public within a reasonable time . . .

In this connection it must be kept in view that the platting and sale create certain rights in the grantees of the original owner, which, as between the grantor and the grantee, are irrevocable in their nature.

But other decisions recognize a clearly defined distinction between the rights acquired by the public through dedication effected by platting and sale, and the private rights acquired by the grantees by virtue of grant or covenant contained in a deed which refers to a plat, or bounds the property upon a street through the grantor's lands. These decisions adopt the view that where lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantee to the use of the streets and ways laid down on the plat or referred to in the conveyance. But these rights are purely in the nature of private rights founded upon a grant or covenant, and no public rights attach to such streets or lands until there has been an express or implied acceptance of the dedication, evidenced either by general public user, or by the acts of the public authorities. In this view, the making of the plat and the sale of lands with reference thereto are merely evidence of an intent to dedicate, which like every other common law dedication, to be made complete and carried into effect so as to create public rights, must be accepted and acted upon by the public. [Citations omitted; internal quotations omitted; emphasis added.].[5]

In this case, it is undisputed that the dedication in the 1835 plat for the streets at issue for "Harford Village," though recorded, was never accepted by the public. Further, Judge Shelton found that the offer of the dedication was withdrawn by the Harfords and that the Beach family

[5] As summarized by the Court of Appeals in *Nelson v Roscommon County Rd Comm'n*, 117 Mich App 125, 132; 323 NW2d 621 (1982):

> It is well established that a purchaser of property in a recorded plat receives not only the interest as described in the deed but also whatever rights are indicated in the plat. *Kirchen v Remenga*, 291 Mich 94, 102-109; 288 NW 344 (1939); *Fry v Kaiser*, 60 Mich App 574, 577; 232 NW2d 673 (1975). A grantee of property in a platted subdivision acquires a private right entitling him '"to the use of streets and ways laid down on the plat' regardless of whether there was a sufficient dedication and acceptance to create public rights," *Rindone v Corey Community Church*, 335 Mich 311, 317; 55 NW2d 844 (1952). Therefore, whether or not the street in question was properly dedicated or accepted by [the public authority] is irrelevant as to the interests of the property owners within the subdivision. The private rights of those property owners to use the dedicated street cannot be extinguished by the township's failing to accept the street for public use.

took steps during the 19th century to withdraw the offer. (18a) Consequently, the Court of Appeals noted:

> The parties are in agreement that the 1835 recording of the plat constituted a private dedication that encompassed, in part, North and Cross streets, which, although platted, were never developed as streets. [283 Mich App at 509]

Accordingly, the Township has conceded that "its rights to North Street and Cross Street arise from the *private* dedication in the plat and that its rights derive from its status as an owner of lots within the subdivision." *Id*. at 522 (Emphasis in original.) [6]

Because this case concerns a common-law private dedication, the purchasers of the lots that were conveyed with reference to the recorded plat in their deeds may be presumed to have accepted the benefits and liabilities associated with the private dedication. See *Martin, supra,* 469 Mich at 549 n 19. The private dedication created an irrevocable easement in favor of the lot owners. *Little, supra,* 469 Mich at 561-562 (reaffirming that "a dedication of land for private use

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[6] Given that there was no public acceptance of the dedication in the 1835 plat, there is no legal basis for the Township's ownership claim of the streets at issue "as a municipality holding fee title in trust for public use." (Appellant's Brief, p 33, n 19). This is true even if acceptance is statutorily presumed under MCL 560.255b (through the enactment of 1978 PA 556) because there were acts of withdrawal prior to the amendment taking effect in 1978. *Vivian, supra,* 433 Mich at 519-520; *Marx, supra,* 220 Mich App at 80-82. Thus, the Township's claim may ***only*** be based upon its standing as a private lot owner in the 1835 plat, ***not*** as a municipality. However, even assuming *arguendo* that the Township claims any rights as a public body holding the disputed property in fee for the use of the lot owners, the Beach family's title by adverse possession is superior to any rights in the "public" because (1) adverse possession by the Beach family and their predecessors in interest attached in 1853 to part of "North Street" and all of "East Street," (2) by the 1862 deed to the Beach predecessor, Garrett Tereance, for the former "Cross Street," and (3) the chain of title from Lucinda Harford to a predecessor of the Beach family on December 8, 1863 for the balance of "North Street." These chains of title and periods of possession run well in excess of 15 years before the enactment of 1907 PA 46, now MCL 600.5821, which prohibited adverse possession of municipal property. See *Field v Village of Manchester,* 32 Mich 279 (1875) (allowing adverse possession by proprietor of platted streets in a dedication that was not publicly accepted); *Arduino v Detroit,* 249 Mich 382; 228 NW 694 (1930) (finding that the plaintiff acquired title by adverse possession where there was no public acceptance of an alley); *Howard v Village of Berrien Springs*, 311 Mich 567; 19 NW2d 101 (1945) (holding that the plaintiff, in a suit to quiet title to land dedicated by the village "for the benefit of the public," acquired title by adverse possession).

in a recorded plat gave owners of the lots an irrevocable right to use such privately dedicated land"). Upon the sale of property in the plat, the proprietor or grantor was estopped from revoking the private dedication of the platted land for streets. *Schurtz, supra,* 286 Mich at 696, quoting *Westveer v Ainsworth*, 279 Mich 580; 273 NW 275 (1937).[7]

(b) Title to privately dedicated land in a plat for streets may be acquired by adverse possession.

Notwithstanding that the proprietor or grantor of the dedication in the plat is estopped from revoking the offer of the dedicated land reserved as private rights for lot owners, the lot owners themselves are not thereby precluded from acquiring the privately dedicated land by adverse possession when there is no public acceptance of the dedication. This follows from the common-law right to freely alienate land or property. See *Braun v Klug*, 335 Mich 691; 57 NW2d 299 (1953) (recognizing the common-law right of alienation); *LaFond v Rumler,* 226 Mich App 447, 451; 574 NW2d 40 (1997) ("Michigan follows the common-law rule against

[7] *Westveer* involved a review of the trial court's order denying the vacation of the 1886 plat by the West Michigan Park Association "providing 150 lots, and designating the balance as parks, streets, etc.," which was also the subject of this Court's decisions in *West Michigan Park Ass'n v Pere Marquette R Co*, 172 Mich 179; 137 NW 799 (1912) and *Kirchen, supra,* 291 Mich at 94, and the Court of Appeals' decision in *West Michigan Park Ass'n v Dep't of Conservation,* 2 Mich App 254; 139 NW2d 758 (1966). In *Westveer*, this Court addressed "the question whether the lot owners have a private right to continuance of the public places as indicated on the plat," where there had been no acceptance of the dedication by the public. *Id*. at 583. There, this Court, relying upon *Pulcifer, supra,* 246 Mich at 579 and *Diamond Match Co v Ontonagon*, 72 Mich 249; 40 NW 448 (1888), reaffirmed that the proprietor was estopped from denying the dedication of streets as against the lot purchasers but did not "attempt to define precisely the sort of title the lot purchaser has in the public grounds." *Id*. at 583-584. But where there has been no public acceptance of a dedication, it may be assumed that the lot owners in a plat possess the privately dedicated streets collectively as a tenancy in common. It is well-settled that a tenant in common may acquire title against his cotenants by adverse possession. *Taylor v S S Kresge Co*, 326 Mich 580, 588; 40 NW2d 636 (1950), citing *Campau v Campau*, 44 Mich 31; 5 NW 1062 (1880); *Wengel v Wengel*, 270 Mich App 86, 96; 714 NW2d 371 (2006), citing *Campau v Campau*, 45 Mich 367; 8 NW 85 (1881).

unreasonable restraints on alienation of property.")[8] This legal proposition was implicitly recognized by this Court in *Kirchen v Remenga*, 291 Mich 94; 288 NW 344 (1939), which considered whether the defendants acquired title by adverse possession to land privately dedicated for park purposes in a plat. In *Kirchen*, this Court found that the defendants failed to establish that the "plaintiffs have abandoned whatever rights they may have had in the premises dedicated for park purposes, and that defendants have acquired their rights therein by *adverse possession*." *Id*. at 112 (Emphasis added.) In rejecting the defendants' claims, *Kirchen* stated:

> It does not appear plaintiffs and their grantors ever ceased to use the park lands for the purposes for which they were dedicated. Plaintiffs do not claim exclusive rights to the use and possession of the park lands, but only claim they are entitled to use them in common with others in the same manner in which parks are generally used. Such use by plaintiffs and by their grantors has been continuous, and it cannot be said that abandonment has taken place. The burden of proving abandonment is upon the party asserting it, and abandonment occurs only when the use for which the property is dedicated wholly fails. . . Plaintiffs contend, and we hold, such use of the park lands as has been made does not amount to an abandonment. [*Id*. at 112-113; citations omitted; emphasis added.)]

Kirchen thus concluded that the defendants did not acquire title by adverse possession because a '"[a] mere permissive possession, or one consistent with the title of another, however long continued, can never ripen into a title by adverse possession.'" 291 Mich at 115, quoting *Township of Jasper v Martin*, 161 Mich 336, 343; 126 NW 437 (1910).

Even though adverse possession of privately dedicated land in the plat was not found, *Kirchen* impliedly held that where there is no public acceptance of a dedication, a lot owner *can* acquire title to land privately dedicated in a plat for streets based upon the doctrine of adverse

[8] Allowing adverse possession of privately dedicated land in a plat earmarked for roads or streets is consistent with the longstanding principle declared by Justice Cooley in *Wayne Co v Miller*, 31 Mich 447, 448-449 (1875) requiring public acceptance of a dedication in a plat for public use by a manifest act in order "to prevent land from becoming waste property, owned or developed by no one." *Kraus, supra*, 451 Mich at 448. The present case perfectly illustrates this principle where there was no public acceptance of the land dedicated for North, Cross and East Streets, and where the land was never developed or used as streets, but incorporated into the Beach farm under a claim of right so that it did not become "waste property, owned or developed by no one."

possession.[9] *Kirchen's* recognition that the doctrine of adverse possession applies to privately dedicated land in a plat was made manifestly clear in the dissenting opinion of Justice Wiest in *Kirchen*. Disagreeing with the majority's conclusion that the defendants failed to acquire title to the disputed property by adverse possession based upon the plaintiffs' abandonment of the premises, Justice Wiest stated:

> Plaintiffs may not now disturb what they have, without protest, permitted by their inaction for upward of forty years. It is inequitable and unjust to grant them the relief awarded in this case. Defendants were something more than squatters; they acted in the belief that they had good title, and their good faith and probable grounds for entertaining the view that they had title brings this case, so far as plaintiffs are individually concerned, within the rule that, having slept on their now asserted rights for so many years, it is too late to have ouster at this late date. [291 Mich at 118] (Emphasis added.)

See also *Feldman v Monroe Township Board*, 51 Mich App 752; 216 NW2d 628 (1974) (applying *Kirchen* affirming the trial court's findings that the plaintiffs factually failed to show abandonment of privately dedicated land in a plat).

(c) The clear and cogent evidence established that the Beach family adversely possessed the streets at issue.

(i) The elements of an adverse possession claim.

The basis for a claim of adverse possession is found in MCL 600.5801, which provides,

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[9] Given this Court's recognition (before the enactment of 1907 PA 46) of adverse possession claims against municipalities as to platted land for streets in dedications that were not publicly accepted, see note 5, *supra*, the doctrine of adverse possession applies with even greater force in the context of claims as to *privately* dedicated land in a plat. For example, in *Olsen v Village of Grand Beach*, 282 Mich 364; 276 NW2d 481 (1937), this Court considered whether the plaintiffs, lot owners in the plat of Grand Beach Springs recorded in 1908, acquired rights in the publically dedicated streets in the plat as against the Village of Grand Beach by virtue of adverse possession. There, this Court noted that "unless the dedication was actually withdrawn or the plat abandoned or vacated, it appears that plaintiffs could acquire no rights in these platted streets except on the theory of having acquired such rights by adverse possession." *Id*. at 368-369. But for the fact that the plaintiffs were foreclosed by statute, they could have claimed title to the *publicly* dedicated streets by adverse possession. *Id*. at 369. *A fortiori*, the Beach family was not precluded from adversely possessing *privately* dedicated streets in the 1835 plat where the dedication was not publicly accepted and also was withdrawn by subsequent acts of the Harfords and the Beach family inconsistent with the dedication.

in pertinent part:

> No person may bring or maintain any action for 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.

The period of limitation for acquisition of land by adverse possession is fifteen years. MCL 600.5801(4); *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993). "Adverse possession requires a showing of clear and cogent proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the applicable statutory period." *Gorte, supra* at 202 Mich App at 170, citing *Burns v Foster*, 348 Mich 8, 14-15; 81 NW2d 386 (1957) and *Kipka, supra*, 198 Mich App at 439. In *Kipka*, the Court of Appeals further noted:

> To claim by adverse possession, one must show that the property owner of record has had a cause of action for recovery of the land for more than the statutory period. A cause of action does not accrue until the property owner of record has been disseised of the land. MCL 600.5829. Disseisin occurs when the true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership. [*Id*. at 439 (citations omitted.)]

As stated by Justice Wiest in *Howard v Berrien Springs*, 311 Mich 567, 569-570; 19 NW2d 101 (1945), quoting *Smith v Feneley*, 240 Mich 439; 215 NW2d 353 (1927):

> "Claim of title or claim of right is essential to adverse possession, but it is not necessary that an adverse claimant should believe in his title, or that he should have any title. He may have no shadow of title and be fully aware of that fact, but he must claim title. He may go into possession without any claim of title, but his possession does not become adverse until he asserts one; and he may assert it by openly exercising acts of ownership, with the intention of holding the property as his own to the exclusion of all others."

If the adverse possessor manifests an intent to claim title to a visible, recognizable boundary, regardless of the true boundary line, the possession is hostile. *Gorte, supra.* Adverse possession is established when the adverse possessor possesses the land of another intending to hold to a particular recognizable boundary, regardless of the true line. *Id*., citing *Connelly v.*

Buckingham, 136 Mich App 462, 468; 357 NW2d 70 (1984).[10]

(ii) Establishing adverse possession of an easement.

An easement may be extinguished by adverse possession where use is inconsistent with the easement. *Harr v Coolbaugh*, 337 Mich 158, 165-166; 59 NW 132 (1953); *Greve v Caron*, 233 Mich 261, 266; 206 NW 334 (1925); *Olsen*, *supra*, 282 Mich at 368-369; *Nicholls v Healy*, 37 Mich App 348, 349; 194 NW2d 727 (1971). In determining the adverse possession of an easement, the question is whether the adverse possessor's use of the easement would constitute "an obstruction to the way or result in the loss of its loss by ouster or adverse possession, if it permitted use of the way, since the owner of the servient estate may make any use of the premises not inconsistent with easement." *Greve*, *supra*, citing *Murphy Chair Co v Radiator Co*, 172 Mich 14, 29; 137 NW 791 (1912); *Harr*, *supra*, 337 Mich at 165-166 (quoting same); *Nicholls*, *supra*, 37 Mich App at 349 (citing *Greve* and *Harr* for the same)).

(iii) New title is established by adverse possession.

The legal ramifications flowing from adverse possession were explained by the Court of Appeals in *Gorte*:

> 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

[10] Assuming that the lot owners in the 1835 plat, including the Township, possessed the privately dedicated streets as a tenancy in common, a heightened standard of proof applies to establish adverse possession. As *Campau*, *supra*, 45 Mich at 368, explains:

> [A]s between tenants in common, a claim of adverse possession by one should not be of doubtful character, but clear and unambiguous. The reason of this is that the possession itself is rightful, and does not imply adverse possession as would that of a stranger, so that the presumption of possession in recognition of the rights of co-tenants must be overcome by acts and declarations clearly inconsistent therewith brought home to the co-tenants.

While a tenant in common may acquire title against a cotenant by adverse possession, "the proofs must be clear and cogent, and the case cannot be made out by inference." *Taylor*, *supra*, 326 Mich at 588, quoting *Donohue v Vosper*, 189 Mich 78; 155 NW 407 (1915).

> the land, and this title is good against the former owner and against third parties. [202 Mich App at 168.]

Gorte further noted:

> . . . 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 NW 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*. [*Id*. at 168-169] (Emphasis added.)[11]

Accordingly, by operation of law, title is vested in the adverse possessor upon the expiration of the statutory period. *Id*. at 168. No judicial action is necessary to effectuate the transfer of a vested right or title to the property to the adverse possessor. Title carries with it certain incidents, including "the right to defend the possession and to protect the property against the trespass of others." *Zabowski v Loerch*, 255 Mich 125, 128; 237 NW 386 (1931).

Because title established by virtue of adverse possession is new title that extinguishes the rights of all others, including the owner of record, once the elements of adverse possession have been met, a party with rightful possession of real estate acquired by adverse possession cannot be displaced by a party asserting an interest to the claimed property. This Court noted this well-established rule of law in *Lawson v Bishop*, 212 Mich 691, 699; 180 NW 596 (1920):

> Many titles are based on "squatters rights," which after the statutory period ripen into perfect titles. Such a possession, whether with or without color of title, confers an indefeasible title in fee. . . . The title thus acquired is not that of the original owner, but a new title by which the rights of all others claiming any interest in the land have been

[11] In support of its application of the rule that title vests when the period of limitation expires, *Gorte* referenced the decision in *Hill v Houghton Twp*, 109 Mich App 614, 616-617; 311 NW2d 429 (1981), which relied upon this Court's decision in *Howard, supra*, 311 Mich at 567. Accordingly, in *Gorte*, the Court of Appeals held that "if plaintiffs met all the elements for adverse possession for a period of fifteen years preceding the effective date of the amended statute, plaintiffs' failure to earlier assert the claim in a legal action does not preclude them from now asserting title by virtue of adverse possession." *Id*. at 169.

extinguished.[12]

Thus, in this case, the Court of Appeals properly noted:

> The heart of an adverse possession claim is that a party is effectively and unlawfully intruding on a real property interest lawfully held by another. In other words, the adverse possessor is doing something that the law prohibits and for which the owner has an action. Michigan courts long ago adopted a common-law theory of adverse possession, see, e.g., *Sanscrainte v Torongo*, 87 Mich App 69; 49 NW2d 497 (1891), under which a claim of adverse possession was a positive claim, by the possessor, to actual ownership of disputed property, rather than a statute-of-limitations defense to a real property action by the putative titleholder. In this manner, after a period of open, notorious, and hostile possession, title passes from the putative titled owner to the person who has actually been in possession of the land. [283 Mich App at 511]

(iv) Ms. Beach's quiet title action was based upon a claim of adverse possession.

An owner who claims title to property by adverse possession can assert this claim in an action to quiet title. *Gorte, supra*, 202 Mich App at 161. Pursuant to MCL 600.2932(1),

> Any person claiming a right in, title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

See also MCR 3.411 (governing actions to determine interests in land under MCL 600.2932). In the present case, Judge Shelton found in favor of Ms. Beach's quiet title action based upon a claim of adverse possession, ruling that the evidence clearly and unambiguously established that the Beach family adversely possessed the disputed property by the end of the 19th century, more than one century before her quiet title action was brought. Therefore, by the time of the Township's 1954 purchase of lots in the 1835 plat, the Beach family had exclusive title by virtue of adverse possession to the dedicated streets at issue (North, Cross and East), including the right to possession and the right to exclude all others from the property. These findings of

[12] See also *Yatczak v Cloon*, 313 Mich 584; 22 NW2d 112 (1946) (holding that "plaintiff and her husband had already acquired title to the disputed area by adverse possession and the conveyance [to defendants] could not revive title in property that had already been lost").

fact and conclusion of law by Judge Shelton, as affirmed by the Court of Appeals, are undisputed and are not being challenged in the present appeal.

(2) Because The Beach Family Long Ago Acquired Title To The Disputed Property By Adverse Possession, Ms. Beach Did Not Have To File A Claim Under The LDA.

Given that the Beach family acquired title to the subject property by adverse possession, it was unnecessary for Ms. Beach to file a claim under the LDA to vacate, correct or revise the dedication in the 1835 plat, as opposed to filing a quiet title action against the Township based upon a claim of adverse possession. This is so because no judicial action is necessary to acquire title by adverse possession. Title passes by operation of law. Since title to the property at issue had been acquired well over 100 years ago by adverse possession, Ms. Beach properly sought to quiet title against the Township pursuant to MCL 600.2932(1), not to vacate, correct or revise the 1835 plat under the LDA.

(a) *Martin, Binkley* and *Hall* are distinguishable because Ms. Beach's quiet title action sought judicial recognition of the Beach family's superior property rights obtained by adverse possession.

In *Martin*, this Court held that "the exclusive means available when seeking to vacate, correct, or revise a plat is a lawsuit filed pursuant to MCL 560.221 through 560.229. 469 Mich at 542-543. In that case, the subdivision owners filed a quiet title action for the purpose of vacating a dedication in a plat in order to acquire title to property in the plat. Accordingly, this Court found that they were required to file their action under the LDA. *Id*. at 550. See also *Binkley v Asire*, 335 Mich 89, 96-97; 55 NW2d 742 (1952) (holding that a quiet title action seeking to vacate, alter, amend or revise a plat is a proceeding that must be brought "under the plat act as an action at law of special character"); *Hall v Hanson*, 255 Mich App 271, 286; 664 NW2d 796 (2003) (finding that the defendants should have brought their counterclaim pursuant to the LDA where they sought to vacate or otherwise alter the plats dedicating the boulevard to

the public).

Contrary to the Township's claim, the present case is clearly distinguishable from *Martin*, *Binkley* and *Hall*. Unlike those cases, Ms. Beach filed a quiet title action against the Township for the purpose of *establishing her superior title* to the disputed property, not to vacate, correct or revise a plat for the purpose of *acquiring title* to property dedicated in the plat. Because the Beach family had already acquired title to the streets at issue by adverse possession over one century ago, it was thus unnecessary for Ms. Beach to file an action under the LDA.

(b) *Tomacek* supports the conclusion that Ms. Beach, having acquired title to the disputed property by adverse possession, did not have to file a claim under the LDA.

As the Court of Appeals noted, in *Tomacek v Bavas*, 482 Mich 484; 759 NW2d 178 (2008), five justices (Kelly, Taylor, Young, Corrigan, and Markman, JJ) were in agreement with the propositions that the LDA cannot create substantive property rights and that the LDA merely allows a court to alter a plat to reflect property rights already in existence, but does not make it mandatory. 283 Mich App at 516-521. On the other hand, Justice Cavanagh, joined by Justice Weaver, disagreed with the holding that the LDA does not grant courts the power to create substantive property rights. 482 Mich at 501-505. Whether substantive property rights in a plat may be created by the LDA, however, does not alter the conclusion that Ms. Beach was not compelled to file a claim under the LDA to acquire title to the "streets" at issue.

Assuming that the LDA cannot create substantive property rights, as held by the majority in *Tomacek*, it would be unnecessary for a plaintiff seeking to quiet title to property in a plat based upon adverse possession to file a claim under the LDA to vacate, correct or revise the plat. Under the assumption that the LDA cannot create substantive property rights, there would be no point in filing such an action. Under this assumption, the proper course of action

for a plaintiff in this situation would be to file a quiet title action based upon a claim of adverse possession, as Ms. Beach did in this case.

But even assuming that the LDA may create substantive property rights in a plat, as held by the dissenting opinion in *Tomacek*, filing a claim under the LDA would not be mandatory since substantive property rights may also be created by virtue of adverse possession of privately dedicated land in a plat.[13] Given that a plaintiff may quiet title to privately dedicated land in a plat on the basis of adverse possession, a claim under the LDA is not be required since the LDA does *not* provide the *exclusive* way for affecting substantive property rights in a plat. Moreover, as already argued, Ms. Beach was not required to file a claim under the LDA in this case because her quiet title action did not seek to vacate, correct or revise the dedication in the 1835 plat since the Beach family had already acquired title to the streets at issue by adverse possession.

Consequently, regardless of whether substantive property rights may be created by the LDA, the conclusion remains the same: Ms. Beach is not required to file a claim under the LDA. Because title to the subject property had long ago vested in the Beach family by adverse possession, Ms. Beach properly filed an action to quiet title against the Township. No other action was necessary then or now to secure judicial recognition of Beach family's rights to the property at issue.

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[13] As a matter of longstanding Michigan law, it seems clear that the recording of a private dedication in a plat creates substantive property rights upon the sale of property in the plat. As already discussed, when a sale is made with reference to the plat, lot owners have rights in the use of any streets, parks and squares so indicated by virtue of the private dedication. *Schurtz, supra*, 286 Mich at 696; *Westveer, supra*, 279 Mich at 583. Holding as a matter of law that the LDA cannot create substantive property rights in a plat would represent a marked departure from long established principles of Michigan real property law. It would also conflict with the apparent purpose of the LDA to regulate the division of land in a plat for development purposes. As Judge Shelton pointed out, "the Land Division [] Act substantively affect[s] the rights of people to subdivide their property." (4/26/06 M Tr). In the present case, division of land for development is simply not at issue.

(3) Requiring Ms. Beach To File A Claim Under the LDA Is Contrary To The Principles of Statutory Interpretation.

(a) There is nothing in the statutory language requiring that a claim based upon adverse possession be filed in accordance with the provisions of the LDA.

Nothing in the applicable statutory provisions of the LDA warrants the conclusion that a plaintiff seeking to quiet title to property on the basis of adverse possession *must* file a claim under the LDA if the action would affect property in a recorded plat. Like "shall," "must" is generally used to designate a mandatory provision. *Roberts, supra*, 466 Mich at 65. Simply put, there is no express language in the statutory provisions mandating that a plaintiff in this situation file an action under the LDA. Moreover, as already demonstrated, it is well settled by case law that a plaintiff may assert title to privately dedicated land in a plat by adverse possession. See *Kirchen, supra*, 291 Mich at 94. While presumably such a plaintiff *may* also proceed under the LDA to vacate, correct or revise the dedication in the plat, there is no statutory requirement to do so, and this Court should not read one into the statute where it does not clearly exist. See *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002) (noting that "courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature"), citing *Lansing v Lansing Twp*, 356 Mich 641, 649-650; 97 NW2d 804 (1959).

(i) *Appletree Marketing* supports the view that Ms. Beach was not required to file an action under the LDA.

Applying the principles set forth in this Court's recent decision in *Dep't of Agriculture v Appletree Marketing*, 485 Mich 1; 779 NW2d 237 (2010), it is clear that Ms. Beach was not required to proceed under the LDA to vacate, correct or revise the dedication in the 1835 plat with regard to the streets at issue. In *Appletree*, this Court considered "whether the remedies provided for a breach of the Agricultural Commodities Marketing Act (ACMA) supersede

remedies provided by statute under the Revised Judicature Act (RJA) or abrogate those traditionally available at common law." In that case, this Court held:

> [T]he ACMA does not provide the exclusive remedy for its violation and thus does not supersede preexisting statutory remedies or abrogate common law remedies. Therefore, plaintiffs may pursue cumulative remedies provided by the ACMA as well as common law and statutory conversion.

The question presented in this case should be treated in similar fashion. For whether a plaintiff seeking to quiet title to property on the basis of adverse possession *must* file a claim under the LDA poses the question whether the LDA provides the exclusive remedy, superseding preexisting statutory remedies (MCL 600.5801, MCL 600.5829, MCL 600.2932(1)) under the RJA and abrogating remedies traditionally available at common law (adverse possession). As in *Appletree Marketing*, there is no indication that the LDA provides the exclusive remedy for an adverse possession claim under these circumstances, or supersedes preexisting statutory authority providing for a quiet title action based upon a claim of adverse possession or eliminates traditional remedies available at common law. Consistent with *Appletree Marketing*, Ms. Beach therefore is *not* limited to the statutory procedure under the LDA to assert her adverse possession claim, but may obtain relief provided by preexisting statutes under the RJA and traditionally available at common law.

Simply put, the LDA did not abrogate the preexisting statutory and traditional common law basis for adverse possession, which requires no judicial action and occurs by operation of law. Because the Beach family's claim of title arises by operation of law independently of the LDA, an action under the LDA is not mandated, and Ms. Beach was entitled to pursue "cumulative remedies" relating to adverse possession as provided by common law and statute.

(b) <u>Reading a requirement into the LDA where none exists violates the separation of powers doctrine</u>.

Were the statute read so as to require Ms. Beach and all similarly situated landowners to file a claim under the LDA, this Court would usurp a legislative function that does not correspond to the judicial branch of government under the separation of powers doctrine. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 98; 754 NW2d 259 (2008), quoting *Webster v Rotary Electric Steel Co*, 321 Mich 526, 531; 33 NW2d 69 (1948) ("Although we may not usurp the lawmaking function of the legislature, the proper construction of a statute is a judicial function, and we are required to discover legislative intent.") To do so would defy the State Constitution, which strictly forbids a court from exercising legislative power. Mich Const, Art 3, § 2. *Id*. at n 18, quoting *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 65; 718 NW2d 784 (2006) ("It is the legislators who establish the statutory law because the legislative power is exclusively theirs.") Whether a plaintiff who seeks to establish an adverse possession claim that affects property in a recorded plat must file a claim under the LDA is therefore a question for the Legislature to decide, not this Court. Accordingly, it is the prerogative of the Legislature to determine whether the exclusive method of acquiring title to, and exclusive possession of, streets in a plat is prescribed by the LDA pursuant to MCL 560.221 through 560.229, as opposed to an action to quiet title based upon a claim for adverse possession.

(c) Interpreting the LDA to require Ms. Beach to file a claim under the statute is contrary to the rule of *in pari materia*.

Additionally, requiring a claim to be filed under the LDA in these circumstances abridges statutory authority directly governing adverse possession claims, in contravention of the rule to read statutes *in pari materia*. As this Court noted in *Apsey v Memorial Hosp*, 477 Mich 120, 127 n 4; 730 NW2d 695 (2007):

> "The object of the rule *in pari materia* is to carry into effect the purpose of the legislature as found in harmonious statutes on a subject." *Jennings v Southwood*, 446 Mich 125, 137; 521 NW2d 230 (1994), quoting *Wayne Co v Auditor General*, 250 Mich

227, 233; 229 NW 911 (1930).

> Statutes *in pari materia* are those which relate to the same person or thing, or the same class of persons or things, or which have a common purpose. It is the rule that in construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although enacted at different times, and containing no reference one to the other. [*Detroit v Michigan Bell Tel Co*, 374 Mich 543, 558; 132 NW2d 660 (1965)]

In the present case, the Court of Appeals correctly pointed out that MCL 600.5801 embodies "this longstanding common-law recognition of the doctrine of adverse possession and provides in pertinent part:"

> 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.
>
> * * *
>
> (4) In all other cases under this section [subsections 1 through 3 are not applicable here], the period of limitations is 15 years. [283 Mich App at 512].

However, as the Court of Appeals observed:

> Any easement rights in North and Cross Street held by the township and the other lot owners had to be invoked within 15 years of disseisin, either by timely pursuit of an action, or as a defense or counterclaim, raised within the limitations period. Otherwise, those rights were subject to being lost, given the statutory mandate that a property owner cannot sit on his or her rights indefinitely. Failing to permit a stand-alone adverse possession claim would render MCL 600.5801 superfluous and would amount to a judicial end-run around a statute . . . [283 Mich App at 512.]

Reading the relevant provisions of the LDA in accordance with the rule of *in pari materia*, the LDA should therefore be interpreted harmoniously with MCL 600.5801 so as not to mandate an action under the LDA involving a claim of adverse possession of property in a plat.

(d) <u>Requiring Ms. Beach to file a claim under the LDA abolishes by implication well-established common-law principles underlying a quiet title action based upon the doctrine of adverse possession</u>.

Compelling Ms. Beach to file a claim under the LDA also contravenes well-established common-law principles. See *Sotelo v Township of Grant*, 255 Mich App 466, 471; 660 NW2d 380 (2003), rev'd on other grounds 470 Mich 95; 680 NW2d 381 (2004) (recognizing that "the LDA is in derogation of the common-law right to freely alienate real property" and thus the Act should be "strictly and narrowly construed"). In resolving an issue of statutory interpretation, the language of a statute should be read in light of previously established rules of common law. *Nummer v Dep't of Treasury*, 448 Mich 534, 544; 533 NW2d 250 (1995). Because well-settled principles of common law are not abolished by implication, an ambiguous statute must be interpreted to make the least change in the common law. *Marquis v Hartford Accident & Indemnity*, 444 Mich 638, 652-653; 513 NW2d 799 (1994); *Energetics, Ltd v Whitmill*, 442 Mich 38, 51; 497 NW2d 497 (1993).

As the Court of Appeals cogently observed, well-established common-law principles support Ms. Beach's quiet title action based upon the doctrine of adverse possession. 283 Mich App at 510-514. Given that the LDA should be strictly and narrowly construed in light of established common-law principles, there is no jurisprudential basis for this Court to require a plaintiff seeking to establish an adverse possession claim that would affect a claim in a recorded plat to file an action under the LDA since it would, as the Court of Appeals noted, "amount to a judicial end-run around . . . a doctrine of common law accepted for generations in this state." *Id*. at 514.

(4) <u>Pursuant To The Provisions Of The LDA, Ms. Beach And The Other Lot Owners In The 1835 Plat, Including The Township, May File A Claim To Vacate, Correct, Or Revise The Plat To Reflect That The Beach Family Acquired Title To The Streets In Dispute</u>.

Even though Ms. Beach is not required to file a claim under the LDA, she and other lot owners in the 1835 plat for "Harford Village," including the Township, *may* file a claim to

vacate, correct or revise the plat to reflect Judge Shelton's findings of fact and conclusions of law, as affirmed by the Court of Appeals, and a circuit "court *may* order a recorded plat or any part of it to be vacated, corrected, or revised" pursuant to MCL 560.226. (Emphasis added.) "May" designates discretion. *Old Kent Bank v Kal Kustom Enterprises*, 255 Mich App 524, 532; 660 NW2d 384 (2003). As it stands, the 1835 plat has not been vacated, corrected or revised; it still remains of record. Nevertheless, it is not necessary at this time to vacate, correct or revise the plat to reflect that the Beach family acquired title to the streets in question by adverse possession more than one century ago. This case concerns only a judicial declaration of the preexisting substantive rights of the Beach family in the land at issue. Even so, an amendment of the recorded plat can be initiated subsequently by any party to recognize those rights. See *Tomacek, supra,* 482 Mich at 484. Such an action does not contemplate the development or formation of new parcels, but merely the recognition of existing rights.

(a) The Township has standing as a lot owner and also as the governing body to file a claim under the LDA to vacate, correct or revise the 1835 plat.

Among the parties with standing to file a claim under the LDA are lot owners in the subdivision, a person of record claiming under the owner, or the governing body of the municipality in which the subdivision covered by the plat is located. See MCL 560.222. Given that the Township has standing under § 222 as a lot owner and also as the governing body with a clear interest of ensuring that recorded plats accurately depict substantive property rights, this Court, if it is so disposed, should encourage the Township to seek the vacation, correction or revision of the 1835 plat in accordance with the statutory provisions of the LDA so as to reflect the Beach family's fee simple ownership of "North, East and Cross streets."[14]

[14] Given the costly and cumbersome process for effectuating a revision of a plat, the task of revising the 1835 plat better corresponds to the Township, as the governing body of the municipality, if it is inclined to undertake it, rather than Ms. Beach, a private citizen. See Marc

(b) <u>The Township and the State of Michigan wrongly assert that Plaintiffs must file a claim under the LDA by mischaracterizing Ms. Beach's quiet title action as an action to acquire title to the dedicated streets</u>.

While it is clearly desirable as a matter of public policy that plats accurately represent substantive property rights, see *Martin, supra*, 469 Mich at 551, citing *Sroka v State Treasurer*, 169 Mich App 616; 426 NW2d 726 (1988), there is no statutory requirement that Ms. Beach must now file a claim under the LDA in order to vacate, correct or revise the plat with respect to the adversely possessed land in question. Contrary to the position taken by the Township and the Michigan Department of Energy, Labor and Economic Growth, the failure of the 1835 plat of the Village of Harford to reflect that the Beach family acquired the dedicated streets in the 1835 plat by adverse possession over 100 years ago does not pose a clear and present danger to orderly land development in this State.

In this regard, the Township and the State of Michigan misrepresent the nature of Ms. Beach's quiet title action by claiming that it is an *action for <u>title</u>*.[15] However, as already demonstrated, title to those streets had already passed to the Beach family over 100 years ago by virtue of adverse possession, thus extinguishing the easement rights of all the lot owners in the plat, including the Township. Clearly, by filing a *<u>quiet</u> title action*, Ms. Beach did not seek to *acquire* title and exclusive possession to the streets dedicated in the plat, but only a judicial determination that her family had long ago acquired superior title based upon the doctrine of adverse possession. Contrary to the Township and the State's misconstrual, then, the relief that

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Daneman, *Replatting and Subdivision Changes: The Frustrating Paper Chase*, 25 Michigan Real Property Review 195 (1998). As an important practical matter, Ms. Beach should not be compelled by law to expend <u>her</u> time and money in "joining certain state and local units of government" to re-plat uselessly the neighbors' lot lines to a meandering fence line, only a few feet off the existing platted lot lines, particularly since she has no interest whatsoever in subdividing her property for development.

[15] It also appears that the Court of Appeals confused the issue as well, blurring the distinction between a quiet title action based upon a claim of adverse possession and a stand-alone adverse possession claim seeking to acquire title. 283 Mich App at 510-514.

Ms. Beach sought by her quiet title action against the Township in Washtenaw Circuit Court was not to convert land intended by the proprietor of the plat for the common use of the public and the lot owners in the plat. Rather, she merely sought judicial recognition of the Beach family's superior title to the disputed property acquired by adverse possession over one hundred years ago.

Premised upon their basic misconception of her quiet title action, the Township and the State fallaciously argue that Ms. Beach must file a claim under the LDA on the ground that she sought to acquire title to the streets at issue, thereby altering the dedication of these streets in the 1835 plat. Their respective arguments are fundamentally flawed because the key premise is mistaken since Ms. Beach, by filing a quiet title action against the Township, was not seeking to acquire title, but only judicial recognition of title already acquired by adverse possession. Because title to the streets in dispute ("North," "Cross" and "East") passed to the Beach family well over 100 years ago by operation of law upon the expiration of the 15-year statutory period found in MCL 600.5801(4), Ms. Beach properly filed an action for quiet title based upon a claim of adverse possession, as opposed to an action under the LDA.

II. ASSUMING *ARGUENDO* THAT A PLAINTIFF WHO SEEKS TO ESTABLISH AN ADVERSE POSSESSION CLAIM THAT WOULD AFFECT PROPERTY IN A RECORDED PLAT MUST FILE A CLAIM UNDER THE LAND DIVISION ACT, MCL 560.101 *ET SEQ.*, THE STATUTE SHOULD NOT BE APPLIED TO THE PRESENT CASE WHERE IT WOULD ABROGATE OR IMPAIR FLORENCE BEACH'S VESTED RIGHTS TO THE SUBJECT PROPERTY ACQUIRED BY ADVERSE POSSESSION. ALTERNATIVELY, THIS COURT'S DECISION SHOULD BE APPLIED PROSPECTIVELY ONLY.

A. Standard of Appellate Review

In determining whether a statute should be applied prospectively or retroactively, the intent of the Legislature is controlling. *Frank W Lynch & Co v Flex Technologies, Inc*, 463

Mich 578, 583; 624 NW2d 180 (2001). As a general rule, statutes and amendments are presumed to operate prospectively unless they are merely remedial or procedural, were adopted to clarify an existing statute and determine a question regarding its meaning, or the Legislature expressly or impliedly indicated an intent to give retroactive effect. *Detroit v Walker*, 445 Mich 682, 704; 520 NW2d 135 (1994). A statute that affects substantive rights is not remedial. *Frank W Lynch, supra* at 585. Statutes may not be applied retroactively if they abrogate or impair vested rights. *In re Certified Questions*, 416 Mich 558, 572; 331 NW2d 456 (1982)). Alternatively, as noted in *Pohutski, supra*, 465 Mich at 696-697:

> Although the general rule is that judicial decisions are given full retroactive effect, *Hyde v Univ of Michigan Bd of Regents*, 426 Mich 223, 240; 393 NW2d 847 (1986), a more flexible approach is warranted where injustice might result from full retroactivity. *Lindsey v Harper Hosp*, 455 Mich 56, 68; 564 NW2d 861 (1997).

In *Pohutski*, this Court observed that three factors are weighed in determining whether a decision should not have retroactive effect: "(1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect of retroactivity on the administration of justice." *Id*. at 697.

B. <u>Legal Discussion</u>

Even assuming *arguendo* that this Court interprets the LDA to require a plaintiff seeking to establish an adverse possession claim that would affect property in a recorded plat to file a claim under the LDA, the statute so interpreted cannot be applied to Ms. Beach in this case because it would abrogate or impair her vested rights to the subject property acquired by adverse possession against all the world, including the present-day lot owners in the 1835 plat for "Harford Village." *Id*. As already established, the Beach family acquired a vested right to fee simple ownership in the subject property by virtue of adverse possession, and thus Ms. Beach's quiet title action merely sought to receive judicial recognition of this legal fact. Thus,

even assuming *arguendo* that the LDA is interpreted to require a plaintiff seeking to establish an adverse possession claim that would affect property in a recorded plat to file a claim under the LDA, the statute cannot be applied in the present case to require Ms. Beach to file an action to vacate, correct or revise the 1835 plat because it would abrogate or impair her vested rights to the subject property. *In re Certified Questions*, *supra*, 416 Mich at 572.

Alternatively, under *Pohutski,* it would be inequitable and unjust to apply such a judicial decision retroactively to this case. Assuming *arguendo* that this Court decides that a plaintiff in these circumstances must file a claim under the LDA, this decision should have prospective application only. While the ostensible purpose of the presumed "new rule" would be to ensure that plats accurately reflect existing substantive property rights, there is no question that there has been extensive reliance by Michigan courts and litigants on the "old rule" whereby courts for well over one century have recognized, as a matter of statutory and common law, that privately dedicated land for undeveloped and unused "streets" in a plat may be acquired by adverse possession. Further, as already indicated, Ms. Beach has vested rights in the disputed property against the entire world in reliance upon the "old rule." Because the reliance interest associated with the longstanding practice of Michigan courts clearly outweighs the effect of retroactivity on the administration of justice, any decision by this Court requiring a plaintiff in her situation to file a claim under the LDA should be given prospective application only.

III. ASSUMING *ARGUENDO* THAT A PLAINTIFF WHO SEEKS TO ESTABLISH AN ADVERSE POSSESSION CLAIM THAT WOULD AFFECT PROPERTY IN A RECORDED PLAT MUST FILE A CLAIM UNDER THE LAND DIVISION ACT, MCL 560.101 *ET SEQ.*, AND THAT THE STATUTE SHOULD BE APPLIED RETROACTIVELY, PLAINTIFF FLORENCE BEACH SHOULD BE ALLOWED TO AMEND HER COMPLAINT TO ALLEGE A CLAIM UNDER THE LAND DIVISION ACT.

Courts freely grant leave to amend a complaint when justice so requires. MCR

2.118(A)(2); *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (2003). As already indicated, on February 16, 2006, Ms. Beach moved to amend her Complaint to add a claim under the LDA in the event that Judge Shelton had granted the Township's motion for summary disposition based upon the argument that the sole relief available to her was an action under the LDA to amend the 1835 plat. Accordingly, assuming *arguendo* that Ms. Beach must file a claim under the LDA, she should be given the opportunity to proceed under the LDA by amending her complaint in order to add the necessary parties in accordance with MCL 560.221 through 560.229. See *Martin, supra*, 469 Mich at 551-552.

CONCLUSION AND RELIEF

Based upon the foregoing, this Court should affirm the Court of Appeals opinion holding that Plaintiff Florence Beach was not required to bring her quiet title action based upon a claim of adverse possession under the Land Division Act, MCL 560.101 *et seq*., and provide her with any and all relief as justice and equity require.

Respectfully Submitted,

By: _____
Gary P. Supanich (P45547)
Attorney for Plaintiff/Counter-Defendant/Appellee
Florence Beach
116 Washington, Suite 260
Ann Arbor, MI 48104
(734) 276-6561

By: _____
Peter C. Flintoft (P13531)
Attorney for Plaintiff/Counter-Defendant/Appellee
Florence Beach
119 South Main Street
P.O. Box 187
Chelsea, Michigan 48118
(734) 475-8671

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