

NO. A09-1414

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State of Minnesota

In Court of Appeals

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Barbara Schoenwetter, Lewis J. Schoenwetter, Claire Schoenwetter,  
and Helen H. Weber by Robert M. Weber, her attorney in fact,

*Appellants,*

vs.

City of Fifty Lakes,

*Respondent.*

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**Brief of *Amicus Curiae*  
League of Minnesota Cities**

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## **LEGAL ISSUE**

Does Minn. Stat. § 160.05 (“the user statute”) apply to portions of a public road that have deviated from the platted path onto private Torrens property when the deviations have been used and maintained as part of a public road for decades without objection?

The district court held that the user statute applied.

## INTRODUCTION

The League of Minnesota Cities (“League”) has a voluntary membership of 830 out of 854 Minnesota cities including the City of Fifty Lakes (“City”).<sup>1</sup> The League represents the common interests of Minnesota cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, policy-development, risk-management and advocacy services. The League’s mission is to promote excellence in local government through effective advocacy, expert analysis and trusted guidance for all Minnesota cities.

The League has a public interest in this appeal as a representative of hundreds of cities throughout the state that are responsible for managing thousands of miles of public roads. We have a particular interest in clarifying that Minn. Stat. § 160.05 (“the user statute”) applies to portions of long-established public roads that have deviated from the platted path onto private property regardless of whether those deviations are on abstract or Torrens property. All Minnesota cities have an interest in ensuring that the user statute applies in these situations to protect the public interest in these long-established public roads.

In this case, Appellants sued seeking declaratory judgment, trespass damages and ejectment of the City from the portion of their properties that the City encroached on in 1971 when it laid a gravel road that partially deviated from its platted path. The City

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<sup>1</sup> Pursuant to Minn. R. Civ. App. P. 129.03, the League certifies that this brief was not authored in whole or in part by counsel for either party to this appeal and that no other person or entity besides the League made a monetary contribution to its preparation or submission.

moved for summary judgment claiming the disputed portions of the public road were dedicated pursuant to the user statute and, alternatively, pursuant to common law dedication. The City also raised the affirmative defense of laches.

The district court held that the user statute applied to the disputed portions of land and that there were issues of material fact regarding the issues of trespass, ejectment and laches. The district court did not address the issue of common law dedication.

### **STATEMENT OF THE CASE AND THE FACTS**

The League concurs with the City's statement of the case and the facts.

### **STANDARD OF REVIEW**

The League concurs with the City's statement of the standard of review.

### **LEGAL ARGUMENT**

The City's Brief demonstrates why the district court's decision should be affirmed. The League will not repeat the City's legal arguments here. Instead, this brief will focus on the statewide significance of this appeal for cities and on why it is good public policy to apply the user statute to protect the public interest in long-established public roads.

#### **I. The resolution of this appeal will have a significant, statewide effect on Minnesota cities.**

The resolution of this appeal will have a significant, statewide effect on Minnesota cities. There are approximately 135,500 miles of roads and bridges in Minnesota. *See* Dan Olson, Minnesota's Roads are Wearing Out, Minnesota Public Radio, Sept. 23, 2004, [http://news.minnesota.publicradio.org/features/2004/09/23\\_olsond\\_roads/](http://news.minnesota.publicradio.org/features/2004/09/23_olsond_roads/) (visited Dec. 15, 2009). The state is responsible for maintaining approximately 12,000 miles of

these public roads and bridges, and the other 123,500 miles are maintained by other entities including cities. *Id.*

All Minnesota cities incur substantial expense in designing, constructing and maintaining public roads. In fact, expenditures relating to public roads and highways are consistently the largest expenditure category for Minnesota cities with a population under 2500. *See* Minnesota City Finances, 2007 Revenues, Expenditures, and Debt, Office of the State Auditor, State of Minnesota (Jan. 14, 2009) at page 3, [http://www.osa.state.mn.us/reports/gid/2007/ciRed/ciRed\\_07\\_Report.pdf](http://www.osa.state.mn.us/reports/gid/2007/ciRed/ciRed_07_Report.pdf) (visited Dec. 15, 2009). In 2007, for example, expenditures for public roads and highways accounted for 26 percent of city expenditures for cities with a population under 2500. *Id.*

In addition, many public roads – like the gravel road at issue in this case – have existed for decades, and the public relies on them. It is likely that surveys of the thousands of miles of public roads would reveal that a significant number of them have likewise deviated from their platted path to varying extents for a variety of reasons including engineering decisions, accommodations made for the natural terrain, and human error. All Minnesota cities have an interest in ensuring that the public can continue to use these long-established public roads. All Minnesota cities also have an interest in protecting public tax dollars from being spent to move these public roads or to pay compensation or damages because of them. The user statute must apply to protect the public interest in these long-established public roads.

**I. It is good public policy to apply the user statute to protect the public interest in long-established public roads.**

The League concurs with the City's legal arguments demonstrating why the user statute applies in this case. See Respondent's Brief at 8-23. Application of the user statute to both abstract and Torrens property is consistent with Minnesota law. In addition, there are several reasons why application of the user statute to long-established public roads is good public policy.

First, application of the user statute protects the strong public interest in public roadways. See Minn. Stat. § 645.17 (noting that when ascertaining the legislature's intention it should be presumed that the legislature intends to favor the public interest against any private interest). Public roads are the backbone of any community, allowing neighbors to visit one another, police to patrol, and emergency vehicles to save lives. It would be bad public policy to allow the private interests of a handful of property owners to trump the public interests of the citizens of Fifty Lakes who have used North Mitchell Lake Road in its current location for decades without complaint.

Second, application of the user statute is good public policy because it will protect public tax dollars, which is especially important in these times of economic hardship and cuts to local government aid and city budgets. If this court holds that the user statute does not apply, it could generate similar claims in the City of Fifty Lakes and in cities, towns and counties throughout the state. Again, it is likely that surveys of the thousands of miles of public roads would show that a significant number of them have deviated from their platted path due to a variety of reasons. If the user statute does not apply to

these deviations, cities could be forced to spend public tax dollars to move these roads or to pay compensation or damages because of them. There could also be other negative consequences for the public in addition to financial costs. If a city is forced to move a long-established public road, for example, it might have to cut down mature trees that provide shade and beauty enjoyed by the community.

Finally, application of the user statute is good public policy because six years is a fair amount of time in which to require property owners to act to protect their property interests. The construction and continuing existence of a public road is an obvious fact to property owners and any subsequent purchasers of property. Six years is a reasonable amount of time in which to expect property owners to voice any objections to the existence of a public road. In this case, however, Appellants did not object to the road's encroachment on their property until 1998 (27 years after the road was rebuilt) and did not initiate a lawsuit until seven years after making their objection known. See Appellants' Addendum at 3.

Indeed, Appellant's delay in asserting their property interests even caused our Supreme Court (when it ruled that the statute of limitations for the recovery of real estate was not applicable to Torrens property) to note that the doctrine of laches might apply to this case.

The inapplicability of section 541.01 to Torrens property does not however preserve an ejectment action in perpetuity. An action for ejectment seeks equitable relief, and as such may be subject to the equitable defense of laches. See *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999) (“[I]t is a maxim of equity that he who seeks equity must do equity”) (internal quotation omitted). We have recognized that “a party is barred by laches when the delay is so long and the

circumstances of such character as to establish a relinquishment or abandonment of rights.” *Corah v. Corah*, 246 Minn. 350, 357, 75 N.W.2d 465, 469 (1956).

*Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 233 n. 6 (Minn. 2008). In short, it would be bad public policy to violate concepts of fairness by allowing the public interest in long-established public roads to be outweighed by the private interests of a handful of property owners who have delayed asserting their property rights for decades. This is especially true given the fact that the Torrens statute specifically provides that Torrens property is subject to the same “burdens and incidents which attach by law to unregistered land.” Minn. Stat. § 508.02. Both the user statute and the doctrine of laches are “burdens and incidents which attach by law,” and they should apply to portions of long-established public roads that have deviated from their platted path onto private property regardless of whether those deviations are on abstract or Torrens property.

## CONCLUSION

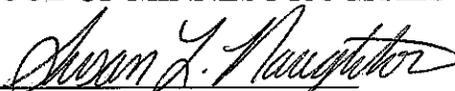
The resolution of this appeal will have a significant, statewide effect on Minnesota cities. All Minnesota cities have an interest in protecting the public interest in long-established public roads and in protecting public tax dollars from being spent to move these roads or to pay compensation or damages because of them. Application of the user statute in this case is consistent with Minnesota law, and it is good public policy.

For all of these reasons, the League respectfully requests that this Court affirm the district court's decision and hold that the user statute applies to portions of long-established public roads that have deviated from the platted path onto private property regardless of whether the deviations are on abstract or Torrens property.

Dated: December 18, 2009

Respectfully submitted,

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