



Bauckham, Sparks, Lohrstorfer, Thall & Seeber, P.C.

Municipal Law Update

June 2011

AG Opinion 7258 - a municipality cannot require payment of unpaid utility service charges on a tax foreclosed property

Attorney General Schuette issued Opinion No. 7258 on May 6, 2011, stating that a municipality cannot require a purchaser of a tax foreclosed property to pay delinquent utility service charges incurred by a former owner of the tax foreclosed property, before the municipality will provide utility services to the new owners of that property.

AG Schuette noted that a judgment of tax foreclosure extinguishes all liens and interests related to unpaid utility service charges against the property. A municipality may, however, pursue collection of such unpaid utility service charges through other available remedies.

[AG Opinion 7258](#)

BSLTS attorneys present MTA seminar on ordinance drafting and enforcement

In July, BSLTS attorneys **Roxanne Seeber** and **Catherine Kaufman** will present a seminar for the



Greetings: Ready or not, here comes summer!! With the fast approach of summer, many of our firm's municipal clients are confronted with issues such as weed control, outdoor gatherings, fireworks, noise ordinance violations and recurring zoning enforcement obligations. If your municipality requires assistance or advice on these, or any other issues, please contact one of our firm's attorneys.

We appreciate the opportunity to serve our many municipal and private clients throughout the State of Michigan.

Bauckham, Sparks, Lohrstorfer, Thall & Seeber, P.C.

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BSLTS attorneys submit amicus briefs on behalf of townships to Michigan Supreme Court

The Michigan Supreme Court agreed in March to resolve two major issues impacting a township's alleged obligation to furnish public sanitary sewer service to its residents and business entities.

The first involves the case of Department of Environmental Quality (DEQ) versus Worth Township, where the DEQ is requiring Worth Township to construct a multi-million dollar sanitary sewer plant and system to service areas where failed private septic tank sewer systems exist along Lake Huron.

The second involves Haring Township (and other townships) versus the City of Cadillac. The City had furnished sanitary

Michigan Townships Association entitled "Writing, Adopting and Enforcing Ordinances." The seminar will focus on different types of ordinances, the process for drafting an ordinance and adoption procedures (both general law and charter township). Of special interest to township officials will be the practical tips offered on successfully enforcing ordinances, including civil infractions and/or litigation.

Accompanying Attorneys Seeber and Kaufman will be Doug Kuhlman, zoning administrator and enforcement officer for several St. Joseph and Cass County communities.

The seminar is scheduled for July 12 in Gaylord and July 14 in Lansing. The seminar will be taped for later viewing.

For more information on the seminar, click on the link below for MTA registration forms.

[MTA Registration - Writing, Adopting & Enforcing Ordinances](#)

New Law regarding Sexually Oriented Business Signs

PA 312 of 2010, effective March 30, 2011, regulates signs advertising sexually oriented businesses. (See MCL 125.2831, *et seq*) The new act provides that a sign located on the premises of a sexually oriented

sewer service in three adjoining townships under federal grants and mutual contracts through the county, which contracts terminate in 2017 unless renewed. The City issued notices to the townships that the contracts would not be renewed, thereby requiring the Townships to construct their own sanitary sewer systems or annex to the city.

Bauckham, Sparks, on behalf of MTA and in support of the Townships, will file amicus curiae briefs on these issues. In the Worth Township case, BSLTS attorneys will argue that the Township has no such obligation as demanded by MDEQ. In the Haring Township case, BSLTS attorneys will assert that Cadillac's notice of termination of its service in 2017 usurps the authority of its city council existing at that time and that the case and statutory law prohibit such arbitrary termination.

In accepting jurisdiction of these cases, the Supreme Court has ordered briefing in the Worth Township case on whether the Natural Resources and Environmental Protection Act empowers the DEQ to seek (and the circuit court to grant) an order requiring a Township, where septic tank contamination of lake waters exists, to construct a sanitary sewer system.

In the Haring Township case, the Supreme Court's order requires briefing on the ripeness of the city council's decision. Additionally, the Supreme Court has ordered briefing on whether the Court's prior decision requiring a city to furnish sewer service to a polluting business in a contiguous Township, where the city had an adjoining available sewer main in the city, was still good law and, if so, whether it requires Cadillac to continue its service to the Townships.

MDEQ won in the circuit court and lost in the Court of Appeals, on a split decision. Cadillac won in both the circuit court and the Court of Appeals. BSLTS attorneys are confident that the briefs submitted on behalf of MTA (and the pertinent townships) will help clarify the townships' interests and rights in each case.

Court of Appeals holds that Tax Tribunal lacks jurisdiction to review accuracy of taxable values in years not timely appealed

On May 31, 2011, the Michigan Court of Appeals released a decision (for publication) holding that the Michigan Tax Tribunal (MTT) does not have jurisdiction to review the accuracy of a property's taxable value in years that were not timely appealed by the property owner.

BSLTS Attorney **Robert Thall** submitted an amicus brief on behalf of MTA, and in support of Northville Township, in the case: *Toll Northville Limited Partnership v Northville Township*.

business, advertising that business, shall display only words or numbers or both. Moreover, the words on the sign shall not describe or relate to specified sexual activity or to specified parts of the body. If there is a conflict between this Act's provisions and a local zoning ordinance or the Highway Advertising Act, the more restrictive provisions shall govern.

A sign in violation of this Act is a nuisance, which is subject to abatement.

Please note that the provisions of this Act have been challenged by sexually oriented business owners in the Detroit area. We advise consulting with your municipal attorney before seeking nuisance abatement under this Act's provisions.

[PA 342 of 2010](#)

Michigan Supreme Court vacates earlier ruling on environmental standing

On April 25, 2011, the Michigan Supreme Court, on reconsideration, vacated its prior ruling in *Anglers of the AuSable, Inc. v. DEQ*, (December 29, 2010)

In our January 2011 firm Newsletter, we noted that the Michigan Supreme Court had, in its December 29, 2010 opinion, clarified standing to challenge the DEQ's issuance of a permit. The Supreme Court held that the legislative intent behind the Michigan Environmental Protection Act (MEPA) was to allow

(The Court of Appeals consolidated *Toll Northville* with two other cases). The *Toll Northville* case has a long history, including a 2008 Michigan Supreme Court ruling declaring unconstitutional the inclusion of public service improvements (ie., sewer service, water service, etc.) as "additions" to otherwise capped taxable value of real property. Based on the Supreme Court's holding, Toll Northville petitioned the Michigan Court of Appeals to review a MTT ruling that allowed Toll Northville to indirectly appeal the addition of public service improvements in the 2000 tax year, even though Toll Northville had only timely appealed the 2001 and 2002 tax years.

Attorney Thall, on behalf of MTA and in support of municipalities across the state, argued that the MTT did not have jurisdiction to review taxable value established in a year not under properly under appeal. Attorney Thall asserted the limited jurisdiction of the MTT, along with the short statutory time frame for appealing any tax issue to the MTT.

The Court of Appeals' decision (released for publication) held that the MTT lacks jurisdiction to review the accuracy of taxable values in years not properly under appeal. Additionally, the Court of Appeals held that public service improvements may not be deducted from taxable value as a loss.

To read the Court of Appeals opinion in the consolidated cases, click the link below.

[MJC Lotus Group v Twp of Brownstown, et al](#)

Michigan Court of Appeals clarifies DEQ's jurisdiction as to setbacks from Great Lakes



The Michigan Court of Appeals recently released an opinion clarifying the extent of the DEQ's jurisdiction regarding setback of structures along the Great Lakes. The recent Court of Appeals opinion, *Burleson v DEQ*, No. 29216, May 12, 2011 (released for publication), specifies that the DEQ may regulate from the established ordinary high water mark (OHWM), instead of the natural ordinary high water mark (NOHWM). The ordinary high water mark for each of the Great Lakes is established as a fixed datum number. For Lake Michigan the OHWM is 579.8 feet of elevation. Alternatively, the natural ordinary high water mark is different and "... is found at the point where the 'presence and action of the water is so

any person to bring suit to prevent harm to the State's environment. The Supreme Court has now vacated its earlier ruling and dismissed the appeal as being moot. The Supreme Court noted it had no jurisdiction over moot questions, that were not actual controversies.

To see the Michigan Supreme Court's order vacating its previous Opinion, click the link below.

[Anglers of AuSable v DEQ Rehearing](#)

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BSLTS Municipal Law Update and Newsletter

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continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or to other easily recognized characteristic." *Burleson, supra*, citing *Glass v Goeckel*, 473 Mich 667, 693 (2005)

Traditionally, the DEQ asserted its jurisdiction over lands laying between the NOHWM and the water's edge, based on the public trust doctrine. As the NOHWM could change in location over time, the DEQ's jurisdiction over lakefront property would, accordingly, shift as the NOWHM shifted. This made it difficult for government officials and property owners alike to understand the scope of DEQ authority, particularly when it came to reviewing proposed construction plans for lakefront property.

In the *Burleson* opinion, the Court of Appeals held that the plain language of the statute controlled and that the DEQ's jurisdiction was defined by the fixed OHWM. This opinion gives clarity to the scope of DEQ regulation on lakefront properties. A strong dissent pointed out that an OHWM based on a fixed static datum level (from 1955) may not effectively protect the public's interest in the Great Lakes.

To read the Burleson opinion and dissent, click on the links below. For more information on DEQ regulations and their relationship to local zoning, please contact a BSLTS attorney.

[Burleson v DEQ Court of Appeals opinion](#)
[Burleson v DEQ Court of Appeals dissent](#)

Attorney Lohrstorfer's amicus brief, on behalf of MTA, quoted in recent Court of Appeals opinion regarding condemnation

Attorney **John Lohrstorfer's** amicus brief, submitted on behalf of MTA and in support of Lyons Charter Township, was quoted in a recent Court of Appeals' opinion (released for publication) holding that a condemnation award does not have to account for a loss of competitive advantage. Specifically, the Court of Appeals agreed with MTA's amicus brief, which labeled the trial court's compensation award (including compensation for a loss of competitive advantage) as a "new theory of compensation," and warned that allowing such recovery would seriously impact economic growth.

The court noted that to allow recovery in a compensation award for loss of competitive advantage would be ". . .to allow the first developer in a geographic area to monopolize real estate by placing unreasonably high cost barriers for competitors to tap into public utility lines." The court found the trial court's compensation award was incorrect, as it improperly allowed defendant to be compensated for a

relationship. If you have any questions, contact a BSLTS attorney.

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change in the real estate market.

[*Charter Twp of Lyons v McDonalds, et al*](#)