INFORMATION REPORT

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	November 18, 2019
SUBJECT/REPORT NO:	Land Interests over City-owned Land (PW19100) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	David Lamont (905) 546-2424 Ext. 4413
SUBMITTED BY: **SIGNATURE:**	Gord McGuire Director, Engineering Services Public Works Department

COUNCIL DIRECTION

Not Applicable

INFORMATION

Occasionally, the City is challenged with issues that relate to city owned land being occupied by others who do not have a legal right to such a use. The purpose of this report is to aid Staff and Council to better understand the factors that could influence the City's title to land through occupation by abutting owners. This process was once known as "squatters rights" and is known legally as adverse possession.

The right to own land is paramount in our society, and so taking one's legal right to ownership of land through an adverse possession claim is not as simple as making a statement of use and asking to be made the "new" owner. In order for a claim to be successful, the burden of proof lies with the person seeking ownership from the "true" title owner.

There are a number of elements that need to be proven for a claim to be successful; the adverse use of land needs to be open, notorious, obvious, exclusive, hostile, continuous, uninterrupted for the statutory period of time, and the boundary line must be known. This process is fact-specific. The courts will look closely at all the circumstances

of the case, even when all the basic tests for adverse possession appear to have been met.

In Ontario, adverse possession claims are governed by Sections 4, 13 and 15 of the Real Property Limitations Act, RSO 1990, c.L.15. This act outlines that action can be made if continuous and uninterrupted use exceeds ten years prior to the conversion to the Land Titles system. It should be noted that each situation is decided on its own merits and facts, it needs to be proven in court, and only a Judge can make a determination or rule on cases of adverse possession.

The purpose/use of the land is a significant factor in adverse possession claims; the legislation and case law have established a number of rules and precedents regarding claims of adverse possession over public lands.

Roads:

According to legislation, road allowances made by the Crown surveyors that are located in municipalities and road allowances, highways, streets and lanes shown on a registered plan of subdivision are identified in Section 26 of the Municipal Act, (2001) as highways - unless they have been closed. A highway is owned by the municipality that has jurisdiction over it.

Under the Real Property Limitations Act, RSO 1990, c.L.15. Section 16, all public highways, whether assumed or not, are exempt from all adverse possession claims, unless such a claim can be proven to exist 60 years prior to the 13th day of June, 1922.

In Samarkand Investments vs City of Toronto (2009), the court dismissed a claim by a local group of residents and business owners claiming possessory title/adverse possession over a 10-foot wide strip of boulevard land they have been using for parking since 1972. The lands here were deeded to the City for road widening in 1972 but not used as a public road, instead they were used for local parking. In 2008, the City took control of these boulevard lands as part of a beautification project and placed barriers to prevent the parking of cars, and this matter went before the courts. The Judge found, “once a highway, always a highway” and a road does not depend on the public using the entire road because it includes not only the travelled portion but also the ditches and the full extent of the road allowance. The case against the City was dismissed.

City Lands:

City-owned land that is held in trust by a municipality for public use will normally trump the rights of an adverse possession claim by a local property owner because of the public interest in these lands and the courts’ strict application of the legal tests. There have been a number of cases that have established that city-owned land is protected.

For example, Woychyshyn vs City of Ottawa (2009), confirmed this to be the case. There is a public interest in municipally-owned lands. In this instance, parklands purchased with public funds and lands which are meant to be shared and enjoyed by its residents should not be easily lost.

With the deployment of automation in the Ontario Land Registry in the 1990's following s. 32 of the Land Titles Act, a large majority of land in Ontario has been switched over from the Registry system to the Land Titles system. Properties that remain in the Registry system are still open to claims of adverse possession. Property transferred to Land Titles had their title upgraded to Land Titles Conversion Qualified (LTCQ). This type of title provides more protection to land than the Registry system. The time statutory period that is required for adverse possession claim is halted upon the date of conversion to the Land Title system.

What this means is that any claim of adverse possession to a parcel of land in the Land Titles Conversion Qualified (LTCQ) must be proven to have existed for 10 years prior to the point of conversion. Being that 99 percent of all the land in Hamilton is now converted to Land Titles Conversion Qualified, any case of adverse possession has a greater period of possession to prove.

Municipalities are always the largest land owners within their own region, and it is impossible for any municipality to actively protect all their boundary limits. This is one of the leading reasons legislation and case law have evolved to a point that protects all the interests relating to public use and municipally-owned lands, and this has virtually eliminated all possible claims of adverse possession.

In Richard vs City of Niagara Falls (2018), the homeowner sought a declaration of adverse possession for a strip of land approximately 9 metres by 25 metres at the back of his property. The lands were originally part of a railway corridor that was transferred to the City in 1964. The homeowner claims to have planted a row of trees in the mid-1970s, and the lands were registered in the Land Titles system in 1999; and so the 10-year requirement under the Real Properties Limitation Act would appear to be met. The courts found that even though the homeowner intended to have the row of trees act as a barrier to prevent use or access by the public, this did not effectively exclude the City from possession of the lands because the City intended these lands to be used as a public corridor and part of a trail system. The courts were not satisfied that the homeowner planting the trees had effectively excluded the City and the public's use, and therefore, is not an inconsistent use from what is intended by the true owner, the City. Furthermore, the court acknowledged that it is very difficult to obtain adverse possession of land held for public benefit. On appeal, the high court affirmed the decision of the lower court.

In conclusion, Municipal lands in Ontario are protected as it relates to adverse possession. All land that is deemed to be a public highway is protected under legislation. Case law decisions have been very positive toward preserving the public's interest in land and the migration of Land Title systems, from the Registry title system to Land Titles (LTCQ), has significantly reduced the ability to establish a case of adverse possession under the Real Property Limitations Act.

APPENDICES AND SCHEDULES ATTACHED

None