

Verbal Re; Private Road Ownership

Recommendation:

That the Township Solicitor investigate the ownership of Private Roadways where the intent of a Registered Plan of Subdivision or division of property within the municipality to which roadways were originally designated as a public road / Lane for access to these properties. In these particular roadways either the Ownership was Originally Registered to a Company which does not exist now or Individuals that are now deceased.

Within the Township there are two main areas to which the Municipality has determined that maintenance to all Private Roads be suspended. Tanners Beach Area and Long Point Rd South Area

The first Report which has addressed this action is from Dec. 21, 2011, to which the Recommendation to suspend maintenance is for Lawson Lane. Although not part of the Recommendation the Report speaks to an additional 18 Roads that were receiving maintenance and that they were to be notified that maintenance was being suspended. In conversation with the previous Clerk, there are Roadways that the Municipality does own but have deemed them Private. The roads in question I am referring to are Original roads that are still registered to the original owners who are now deceased or a business that is not operating.

It is my interpretation that the original intent of these roadways were to be transferred to the municipality but somehow were never transferred or registered. It was brought to the attention of at least the Public Works Committee back in the 90's prior to amalgamation, as one of the recommendation's from the province for Amalgamation was to confirm that all Municipal lands were properly registered. It was at this time the Superintendent of Roads found error in the registration of these roadways, he indicated that this was a Housekeeping issue that would be brought to the attention of the Twp Solicitor to have it corrected with the Registry Office. Unfortunately, it looks like this was overlooked until 2011 when it came back up in that report.

The second report is a presentation to council I did, to have the Municipality restore maintenance as precedence had been set for almost 40 years. Residents had no particular concern other than normal complaints to condition. I had asked within the presentation to look into this as maintenance on these particular roadways had been done since 1974 - 1975. The decision of the previous council was to stay status Quo.

The reason for bringing back up at this point is there seems to be concern from residents as to encroachments, drainage issues along with some form of maintenance of these roads. The county has also become concerned as Garbage Pick-up has been affected twice in the Long Point area.

My interpretation as to ownership is also outlined from the various Provincial Acts that follow the two reports, to which I believe the Municipality should be the registered owner. Once direction has been established from the solicitor we can further look into what type of maintenance and needs are required for these residents.

STAFF REPORT

Department/Function: Public Works Department

Chair: Councillor Rick Black

Date: December 21, 2011

Subject: **LAWSON LANE PRIVATE ROAD**

RECOMMENDATION:

STAFF RECOMMENDS THAT ONCE THE 2012 WINTER MAINTENANCE (APRIL 2012) HAS BEEN COMPLETED THAT NO FURTHER MAINTENANCE BE PROVIDED TO LAWSON LANE.

INTRODUCTION/BACKGROUND:

With respect to Lawson Lane and Tanners Beach Road area, it has been determined

by file that the roads in this area are private. There are several private roads in the

Tanner's Beach Association including Lawson Lane.

Prior to 2003 all services provided by the municipality was charged back to the

Tanner's Beach Association or equivalent. This letter was circulated to 18 other

private roads within the Township of Tay.

The records indicate that prior to 2002 the local associations were notified by letter

that all road maintenance would cease as of 2003.

Since 2003 there has been several requests for service, ie. gravel, grading and snow

plowing.

Periodically some maintenance was provided by staff in error.

ANALYSIS:

On further review, it was the intent to cease maintenance on all private roads

including Lawson Lane.

Therefore, staff recommends that upon receipt of this letter, all township maintenance shall cease on the completion of the winter maintenance (April 2012).

Works Department December 21, 2011

Lawson Lane Private Road

Respectfully submitted for Council's information.

Gerard LaChapelle,

Works Superintendent

GL/le



STAFF REPORT

<u>Department/Function:</u>	Public Works
<u>Chair:</u>	Councillor Jim Crawford
<u>Meeting Date:</u>	December 13, 2017
<u>Report No:</u>	PW-2017-96
<u>Report Title:</u>	Long Point Road Winter Maintenance

RECOMMENDATION:

That report PW-2017-96 regarding Long Point Road Winter Maintenance be received;

And that no changes be made to Township maintenance of Long Point Road as outlined in Option 1 of this report.

INTRODUCTION/BACKGROUND:

During the June Committee of All Council Meeting, Mr. Barry Norris reviewed the history of Long Point Road. He spoke of the impacts to residents resulting in the termination of winter road maintenance in 2012. Mr. Norris referred to Block C and to street addresses 31 to 43 Long Point Road. This area is shown on the attached sketch. Council requested staff review the matter and report back with a recommendation.

ANALYSIS:

We have reviewed of the Long Point Road file and the property files for the adjacent properties. The items of interest are noted below:

1. 1931 – Bayway Road was transferred to the Township.

2. 1941 – Long Point Road from Bayway to the south limit of 47 Long Point Road (later to become Block B on Plan 1320) was transferred to the Township along with what is now known as Arbour Trail.
3. 1958 – Plan 1320 was registered as a plan of subdivision for the Long Point Road and Wilcox Road area. This plan explicitly stated that the property owners could use the private lands set out as Block C and Block D for access to their properties.
4. 1986 – The former lots 6, 38 and 39 of Plan 1320 were subdivided to form street addresses 38, 39, 41 and 42. These, along with street address 45 and half of 46, front on Block C.
5. 1987 – The Township explicitly advised one of the property owners that there would not be Township maintenance unless a 15m (50ft) road allowance was provided, rather than the 9m (30ft) width of Block C, and that a road to Ministry of Transportation standards was built.
6. 1988 – Mr. Wilcox was advised that the Township would not assume the 9m (30ft) road allowance.
7. 1989 – The owners of 41 and 42 Long Point Road explicitly agreed that Block C was privately owned and that the road was not maintained or snow ploughed by the Township.
8. All of the property files in this area are flagged that they are accessed via a private road. This was explicitly noted on a Municipal Record Search for 38 Long Point Road in 1997.
9. 2012 – At some point in time Township winter maintenance had extended past the Township owned portion, since ploughing of the private road was halted following a letter to the property owners from 35 to 46 Long Point Road in 2012.

There is no evidence that the Township assumed Block C or Block D and they appear to still be owned by members of the Polkinghorne family.

At present, for the portion of Long Point Road that is ploughed, the trucks are driven in and backed out and then backed in and driven out. It would be difficult to extend this approach to on to the private road section.

Options are considered below:

Option 1 Continuation of No Maintenance to Long Point Road south of #47

This option is to leave the road unmaintained through the winter months. Due to the road allowance being privately owned, it should not be the Township's responsibility to complete maintenance procedures.

Option 2 Begin Winter Maintenance of Long Point Road south of #47

This option would offer winter maintenance vehicles onto Long Point Road to plough to some limit, to be determined. Challenges to this approach would

be how to upgrade the road in such a narrow right-of-way and how to manage the inevitable requests to plough all of other private roads in the Township.

FINANCIAL/BUDGET IMPACT:

Option 1 Continuation of No Maintenance to Long Point Road

This option would not cost the Township any money, as they currently are not responsible for this section of road.

Option 2 Begin Winter Maintenance of Long Point Road

If this option were completed after the benefitting property owners provided a wider road allowance and upgraded the road, the costs would be limited to some plough truck time and some extra sand.

However, for the Township to try and manage this would be very costly and time consuming. There would likely be expropriations required and there are significant drainage and road alignment challenges that would be expensive to address.

CONCLUSION:

Further to direction from Committee, this report reviews the history of a section of Long Point Road relative to a request to provide winter maintenance. It is recommended that the Township continues the current practice of not providing maintenance south of the south limit of 47 Long Point Road.

Prepared by: Peter Dance, P. Eng., Director of Public Works

Recommended by: Date: December 5, 2017

Peter Dance
Director of Public Works

Reviewed by: Date: December 6, 2017

Robert Lamb
Chief Administrative Officer

Att. Sketch 1 – Long Point Road from Bayway to 31 Long Point Road

In Ontario, Do You Have a Right to Your Right of Way?

Does your property have a right of way, such as a driveway, across an adjoining property? You may be surprised to learn that a number of lawyers and legal commentators believe that for certain properties this right of way will expire 40 years after it was first granted, unless you take positive steps to preserve your interest. This issue was considered in a recent decision of the Ontario Superior Court of Justice.

Background

Where a property is registered under the Ontario *Registry Act*, a registered claim or interest against that property expires after 40 years, subject to certain exceptions. A claim or interest can be preserved by registering a notice in the form set out in the *Registry Act* (a "Notice of Claim") before the expiration of the 40 year notice period (and if certain requirements are met, thereafter where the interest is full ownership).

The legal descriptions of thousands of properties in Ontario, including *Registry Act* properties, are expressed as being "together with" and/or "subject to" rights of way and various other forms of easements. These easements can be crucial to the access to, and use and enjoyment of, a property. Most practitioners will check that an easement is properly described, complies with the *Planning Act*, and contains the basic legal elements required for validity. But it's likely that most don't consider the possible impact of the 40 year period.

Many properties have the benefit of or are subject to easements originally granted far more than 40 years ago. Since, at law, easements "flow with the land", subsequent deeds will usually include the easement in the legal description, and it is common practice among many (likely most) practitioners to simply rely on such descriptions. But is this approach justified? Or, in the absence of a Notice of

Claim, does an easement registered under the *Registry Act* simply cease to exist 40 years after it was granted?

The Ramsay Decision

The case, *1387881 Ontario Inc. v. Ramsay* ("Ramsay") is a decision of the Ontario Superior Court of Justice dated June 25, 2004. In this case, the applicant was the owner of a *Registry Act* property (the "Servient Property") which was subject to certain registered rights of way (the "Easements") which had been granted in 1941 and 1945, more than 40 years prior to the time in question. The respondents were the owners of several cottage properties that had the benefit of the Easements (the "Dominant Properties"). Each of the respondents had purchased the Dominant Properties within 40 years after the creation of the Easements, and their deeds to the Dominant Properties specifically referred to the Easements. The deed by which the applicant took title to the Servient Property also noted the Easements. None of the respondents registered a Notice of Claim with respect to the Easements prior to expiry of the 40 year search period.

The owner of the Servient Property argued that the Easements had been extinguished because no Notice of Claim had been filed within the 40 year notice period. The applicants contended that the registration of the deeds of the Dominant Properties constituted notice of the Easements, and since less than 40 years had passed since the registration of the deeds, the Easements had not expired. The court had to decide whether the references to the Easements in the deeds was enough to keep them alive, or whether the respondents had to take the extra step of registering a Notice of Claim in the prescribed form.

Clark J. of the Superior Court of Justice reviewed the relevant statutory provisions, caselaw and policy objectives underlying the 40 year rule, and concluded that notice of an interest in land can be given by either the registration of an instrument or the registration of a Notice of Claim. Therefore, the registration of the deeds to Dominant Properties and the Servient Property, which all specifically referred to the Easements, constituted notice of the Easements. Accordingly, the Easements had not expired and still affected the Servient Property.

Future Developments

Ramsay should give some comfort to property owners relying on registered easements for access to and use of their lands. However, an appeal of this decision was heard by the Ontario Court of Appeal in January, 2005. The decision of the Court of Appeal has still not been released. There is a chance that the Court of Appeal may overturn the decision and hold that the only method for protecting an easement or other claim under the *Registry Act* beyond the 40 year period is by registering a Notice of Claim in the prescribed form. Some commentators have strongly criticized the lower court ruling and have cited caselaw which offers some support for this position.

If the Court of Appeal overrules the lower court, it opens the door for the owners of lands subject to registered easements created more than 40 years ago to deny the owner of the benefiting land the use granted under that easement. The easement could also be removed from title by the owner registering a deed of the land to himself, with the easement deleted from the legal description. Such a result could be catastrophic for the benefiting landowner. Registration of a Notice of Claim would preserve a registered easement less than 40 years old, but beyond that point a new easement would have to be granted, or the benefiting landowner would have to try to prove that her property has the benefit of an unregistered right of way or other easement or right that she is openly enjoying and using (such an interest is not subject to the 40 year rule, but there has been some debate as to whether this exception can ever apply to a registered easement).

This case has potentially serious consequences and has stirred much academic debate. This is sure to continue after the Court of Appeal releases its decision. We'll keep you updated.

Municipal Act

Part III Specific Municipal Powers – Highways

Sections 24 through 68 - A few excerpts in relation to the roads

Definitions

24 In sections 25 to 68,

“bridge” means a public bridge forming part of a highway or on, over or across which a highway passes; (“pont”)

“provincial highway” means a highway under the jurisdiction of the Province of Ontario. (“voie publique provinciale”) 2001, c. 25, s. 24.

Provincial highways

25 Except as otherwise provided in this Act, sections 26 to 68 do not apply to a provincial highway. 2001, c. 25, s. 25.

What constitutes highway

26 The following are highways unless they have been closed:

1. All highways that existed on December 31, 2002.
2. All highways established by by-law of a municipality on or after January 1, 2003.
3. All highways transferred to a municipality under the *Public Transportation and Highway Improvement Act*.
4. All road allowances made by the Crown surveyors that are located in municipalities.

5. All road allowances, highways, streets and lanes shown on a registered plan of subdivision. 2001, c. 25, s. 26.

By-laws

27 (1) Except as otherwise provided in this Act, a municipality may pass by-laws in respect of a highway only if it has jurisdiction over the highway. 2001, c. 25, s. 27 (1).

Jurisdiction

28 (1) Except as otherwise provided in this Act or under section 8 of the *Public Transportation and Highway Improvement Act* or in a by-law passed under this Act, a municipality has jurisdiction or joint jurisdiction, as the case may be, over the following highways:

1. All highways over which it had jurisdiction or joint jurisdiction on December 31, 2002.
2. All highways established by by-law of the municipality on or after January 1, 2003.
3. All highways transferred to the municipality under this Act, the *Public Transportation and Highway Improvement Act* or any other Act. 2001, c. 25, s. 28 (1).

Local municipalities

(2) Except as otherwise provided in this Act or under section 8 of the *Public Transportation and Highway Improvement Act*, a local municipality has jurisdiction over,

- (a) all road allowances located in the municipality that were made by the Crown surveyors;
and

(b) all road allowances, highways, streets and lanes shown on a registered plan of subdivision. 2001, c. 25, s. 28 (2).

Ownership

30 A highway is owned by the municipality that has jurisdiction over it subject to any rights reserved by a person who dedicated the highway or any interest in the land held by any other person. 2001, c. 25, s. 30.

Establishing highways

31 (1) REPEALED: 2006, c. 32, Sched. A, s. 16 (1).

By-law necessary

(2) After January 1, 2003, land may only become a highway by virtue of a by-law establishing the highway and not by the activities of the municipality or any other person in relation to the land, including the spending of public money. 2001, c. 25, s. 31 (2); 2006, c. 32, Sched. A, s. 16 (2).

Certain highways not affected

(3) Subsection (2) does not apply to highways described in paragraphs 3, 4 and 5 of section 26. 2001, c. 25, s. 31 (3).

Exclusion

(4) A municipality may by by-law assume the following highways for public use and section 44 does not apply to the highways until the municipality has passed the by-law:

1. An unopened road allowance made by the Crown surveyors.
2. A road allowance, highway, street or lane shown on a registered plan of subdivision. 2001, c. 25, s.

Highway Traffic Act**Sections 1 through 121****Definitions:**

“highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof; (“voie publique”)

Land Titles Act**Sections 1 through 172 A few excerpts from the Sections**

151 (1) Where a plan of subdivision lays out a part of the land as a street, road, lane or common, it shall not be registered except on the application of the owner of the land subdivided with the consent in writing of all persons who are registered as mortgagees or chargees thereof. R.S.O. 1990, c. L.5, s. 151 (1).

Effect of chargee’s consent

(2) The consent of a chargee to a plan of subdivision, when registered, discharges from the charge any land dedicated by the owner as a public highway and any land designated as a reserve that is transferred to the corporation of the municipality in which the land is situate. R.S.O. 1990, c. L.5, s. 151 (2).

Claim under *Family Law Act*

(3) Land dedicated by its owner for a street or public highway is not subject to any claim under Part II of the *Family Law Act* by the spouse of the person by whom it was dedicated. R.S.O. 1990, c. L.5, s. 151 (3); 1993, c. 27, Sched.

Section Amendments with date in force (d/m/y)**Entry on register of municipal corporation as owner of streets laid out on plan**

152 (1) Where a street, road or lane laid out on a plan registered in a land registry office has become a public highway and has thereby become vested in a municipal corporation, the municipal corporation may apply to the land registrar to be entered as the owner thereof. R.S.O. 1990, c. L.5, s. 152 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out “land registrar” and substituting “Director”. See: 2012, c. 8, Sched. 28, ss. 84 (1), 98.

Entry as owner of transferee from a municipal corporation of closed-up highway

(2) Where a highway or part of it has been closed by the action of a municipal council and the highway or part of it has been transferred by the municipal corporation without the municipal corporation having been entered as owner of it, the transferee may apply to be entered as owner of the highway or part of it transferred to the transferee and, upon due proof of the facts, the land registrar may enter such transferee as owner. R.S.O. 1990, c. L.5, s. 152 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out “the facts, the land registrar may enter such transferee as owner” at the end and substituting “the facts satisfactory to the Director, the transferee may be entered as owner”. See: 2012, c. 8, Sched. 28, ss. 84 (2), 98.

Section Amendments with date in force (d/m/y)

Application of *Planning Act*

153 (1) No plan of survey or subdivision to which the *Planning Act* applies shall be registered unless approved under that Act. R.S.O. 1990, c. L.5, s. 153 (1).

Idem

(2) Composite plans registered under section 147 are not subject to the provisions of the *Planning Act* with respect to approval thereof. R.S.O. 1990, c. L.5, s. 153 (2).

Amendment of plan

154 A registered plan shall not be amended except under subsection 145 (6) or under section 146. R.S.O. 1990, c. L.5, s. 154.

DEATH OF REGISTERED OWNER

Transmission on death of owner of freehold land

120. (1) On the death of the sole registered owner or of the survivor of several joint registered owners of freehold land and on the application of any person interested in the land, the person whom the Director specifies shall be registered as owner in the place of the deceased owner or owners. 2012, c. 8, Sched. 28, s. 67.

Factors to consider

(2) In specifying a person for the purpose of the registration, the Director shall have regard to the rights of the several persons interested in the land and in particular to the selection of any person who, for the time being, appears to the Director to be entitled according to law to be so specified. 2012, c. 8, Sched. 28, s. 67.

Appeal

(3) A person aggrieved by an order of the Director made under this section may appeal it to the Divisional Court in the required manner. 2012, c. 8, Sched. 28, s. 67.

See: 2012, c. 8, Sched. 28, ss. 67, 98.

Section Amendments with date in force (d/m/y)

Transmission on death of owner

121 On the death of the sole registered owner or of the survivor of several joint registered owners of leasehold land or of a charge, the executor, administrator or estate trustee of the deceased is entitled to be registered as owner in the place of the deceased. 1998, c. 18, Sched. E, s. 146.

Section Amendments with date in force (d/m/y)

Entry of representatives of deceased tenant in common

122 Where two or more persons holding as tenants in common have been entered as owners of land or a charge and one of them dies, his or her personal representative, or such other person as is entitled to the share of the deceased, may be entered as owner with the survivor or survivors. R.S.O. 1990, c. L.5, s. 122.