

**Adverse possession and prescriptive easement  
litigation brought by Shane B Inc. against City-owned  
land adjacent to 3 Southvale Drive**

<b>Date:</b>	July 5, 2016
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	<b>Ward 26</b> (the litigation is in respect of land located in Ward 26)
<b>Reason for Confidential Information:</b>	This report is about litigation that affects the City, and the confidential attachment contains advice that is subject to solicitor-client privilege and litigation privilege.
<b>Reference Number:</b>	

**SUMMARY**

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The purpose of this Report is to obtain City Council’s approval of a proposed resolution of litigation commenced against the City.

On September 24, 2014, condominium developer Shane B Inc. (the “Applicant”) commenced an Application in the Superior Court naming the City of Toronto as Respondent (the “Application”).

The Application sought a declaration that the Applicant adversely possessed City-owned land adjacent to 3 Southvale Drive such that title to the disputed land should be transferred by the Court to the Applicant. The Application also sought an order that the Applicant has a prescriptive easement over City-owned land for the purpose of ingress/egress to 3 Southvale Drive.

The Application was most recently scheduled to be heard by the Superior Court on June 17, 2016. The Application was resolved subject to approval by City Council. Confidential Attachment 1 contains legal advice from the City Solicitor regarding the proposed resolution of this litigation.

## **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. Council adopt the recommendations in Confidential Attachment 1.
2. City Council authorize the public release of all or a portion of the confidential recommendations, Schedule and Diagrams in Attachment 1 if adopted, at the discretion of the City Solicitor with the remainder of Attachment 1 to remain confidential.

### **Financial Impact**

The financial implications are discussed in Confidential Attachment 1.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

### **DECISION HISTORY**

The City Solicitor has not previously reported on the matters discussed in this report.

### **ISSUE BACKGROUND**

The Application concerns an adverse possession claim over City-owned land that is part of the same Property Identifier Number as the Leaside Memorial Community Gardens. The Application also asks for an order that the Applicant has a prescriptive easement to travel over City-owned land (that includes a road closed by by-law in 1959) for the purpose of ingress/egress to its property at 3 Southvale Drive. The Application relies upon historical evidence regarding use of the disputed lands between 1974 and 2000.

## **COMMENTS**

Confidential legal advice is provided in Confidential Attachment 1.

## **CONTACT**

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Brennagh Smith, Solicitor, 416-397-5612, [brsmith@toronto.ca](mailto:brsmith@toronto.ca)

## **SIGNATURE**

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Brian Haley, Interim City Solicitor

## **ATTACHMENT**

Confidential Attachment 1 (which includes Schedule A and Diagrams 1 & 2)