



## ADMINISTRATIVE REPORT

Report Date: July 2, 2009  
Contact: Al Zacharias  
Contact No.: 604.873.7214  
RTS No.: 08208  
VanRIMS No.: 08-2000-20  
Meeting Date: July 21, 2009

TO: Vancouver City Council

FROM: General Manager of Engineering Services in consultation with the Director of Legal Services

SUBJECT: Establishment as Lane of City-owned Parcels Easterly of Main Street Adjacent to 1 Kingsway (Block 43)

### *RECOMMENDATION*

THAT Council authorize the Director of Legal Services in consultation with the General Manager of Engineering Services to proceed with the necessary arrangements to establish as Lane those City-owned parcels listed in attached Appendix A (the "Block 43 Lane Parcels"), and being the same as shown heavy outlined on the sketch attached hereto as Appendix B.

If Council approves this report, the formal resolution to establish the Block 43 Lane Parcels as Lane will be before Council later this meeting for approval.

### *COUNCIL POLICY*

The authority for establishing streets and lanes is set out in Section 291 of the Vancouver Charter.

### *PURPOSE*

The purpose of this report is to seek Council authority to establish City-owned parcels as lane.

### *BACKGROUND*

Plan 197, the original subdivision plan of the area that includes 1 Kingsway, was deposited in the Land Registry Office on December 8, 1885. The area covered by Plan 197 lies between the south shore of False Creek in the north and Broadway in the south, and between Prince Edward Street in the east and Columbia Street in the west. Plan 197 labelled the lanes as parcels rather than showing them as "Lane" as is typically done on subdivision plans and as a result the lanes were not dedicated to the City. Instead, 20 foot wide parcels were created within many of the blocks shown on Plan 197 and titles were raised often in the name of the

owner/developer. The east-west parcels were created as Parcels A and the north-south parcels were created as Parcels B. Over the years, registered ownership of the Parcels A and B did not transfer forward with conveyances of the adjacent lots and title remained in the name of the historic owner. The lane parcels within Block 43, the "Block 43 Lane Parcels", have been considered to be City lane for many years.

Historical records in the Land Title Office dating back to 1885 reflect conveyances of some of the Block 43 Lane Parcels from private owners to the City but the conveyances were never perfected. The Block 43 Lane Parcels have been used as lane since the early 1900's and public municipal money has been spent to operate them as public lane. The Block 43 Lane Parcels have been fully constructed as a paved lane with both underground and above ground utilities and they provide all the normal functions of a lane for provision of utilities and access to the adjacent lands.

The discovery that Land Title Office records show that the City was not the registered owner of the Block 43 Lane Parcels occurred during the review of the development application for the City-owned project at 1 Kingsway (Development Permit DE408303), the new multi-use civic centre containing a branch library, the relocated Mount Pleasant Community Centre, a child day care facility and multiple rental residential suites (on Lot E, Block 43, District Lot 200A, New Westminster District, Plan BCP14091). Since the ingress and egress for parking, loading, fire and life safety is located at the rear of the development site and accessed from the lane, and access to the site cannot cross private property, a condition of the Development Permit was the resolution of the lane ownership problem or the provision of an alternative design (which would have been very expensive), prior to occupancy. In January 2005 a Section 219 Covenant was registered on the title of Lot E to prevent occupancy of the development until the owner satisfied this Development Permit condition to the satisfaction of the General Manager of Engineering Services and the Director of Legal Services.

In 2008, the City petitioned the Supreme Court of British Columbia under the *Land Title Inquiry Act* for a judicial investigation of the titles to the Block 43 Parcels. In the Judgement dated September 12, 2008 (copy attached as Appendix C) the Honourable Madam Justice Ross declared that the City of Vancouver is the legal and beneficial owner in fee simple of the Block 43 Parcels. A copy of the Oral Reasons for Judgement is attached to this report as Appendix D for further background. Title in the Land Title Office for the Block 43 Lane Parcels has now been raised in the name of the City and it is now required to establish the Block 43 Lane Parcels as Lane pursuant to the *Vancouver Charter*.

### ***DISCUSSION***

If this report is approved and the Block 43 Lane Parcels are established as road under the *Vancouver Charter* then Development Permit Condition 1.6 of DE408303 will have been fulfilled and the No Occupancy Covenant registered on the title to 1 Kingsway can be discharged.

The successful petition to the Supreme Court of British Columbia represents a significant milestone for the City as it will serve as a precedent to support the resolution of many other similar road and lane ownership problems within Vancouver and other areas within the lower mainland. A similar process is already underway for Block 38 (299 East 7th Avenue) wherein the developer is faced with the same problem. City staff from the Land Survey Branch and Legal Services are participating on an inter-municipal committee working to resolve similar problems throughout Metro Vancouver.

*FINANCIAL IMPLICATIONS*

There are no financial implications.

*CONCLUSION*

The General Manager of Engineering Services, in consultation with the Director of Legal Services recommends approval of the Recommendation contained in this report.

\* \* \* \* \*

**City-owned Properties in Block 43, District Lot 200A to be Established as Lane**

Parcel Identifier: 027-806-529

The West ½ of Lot B Adjoining Lot 1, Block 43, District Lot 200A, Group 1, New Westminster District, Plan 197;

Parcel Identifier: 027-806-537

The West ½ of Lot B Adjoining Lot 3, Block 43, District Lot 200A, Group 1, New Westminster District, Plan 197;

Parcel Identifier: 027-806-545

The West ½ of Lot B Adjoining Lot 4, Block 43, District Lot 200A, Group 1, New Westminster District, Plan 197;

Parcel Identifier: 027-806-553

The West ½ of Lot B Adjoining Lot 5, Block 43, District Lot 200A, Group 1, New Westminster District, Plan 197;

Parcel Identifier: 027-806-561

The West ½ of Lot B Adjoining Lot 6, Block 43, District Lot 200A, Group 1, New Westminster District, Plan 197;

Parcel Identifier: 027-806-570

The West ½ of Lot B Adjoining Lot 7, Block 43, District Lot 200A, Group 1, New Westminster District, Plan 197;

Parcel Identifier: 027-806-588

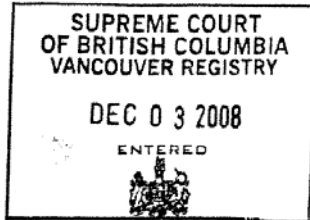
The East ½ of Lot B Adjoining Lot 8, Block 43, District Lot 200A, Group 1, New Westminster District, Plan 197;

Parcel Identifier: 027-806-596

The East ½ of Lot B Adjoining Lot A, Block 43, District Lot 200A, Group 1, New Westminster District, Plan 197;

as shown heavy outlined on the sketch plan attached as Appendix B (the "Block 43 Parcels").





FORM 43 (RULE 41(9))

NO. S084472  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF** the *Land Title Inquiry Act*, R.S.B.C. 1996, c. 251,  
the *Land Title Act*, R.S.B.C. 1996, c. 250

**AND**

**CERTAIN PROPERTY LEGALLY DESCRIBED AS**

**"the West ½ of Lot B adjoining Lots 1, 3, 4, 5, 6 & 7  
and the East ½ of Lot B adjoining Lots 8 & A,  
all of Block 43, District Lot 200A, Plan 197, Group 1,  
New Westminster District"**

**BETWEEN:**

**CITY OF VANCOUVER**

**PETITIONER**

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA,  
EDWIN JACKSON JR., ANDREA PHILIPS,  
SAM JACKSON and  
ROBERT REID JACKSON**

**RESPONDENTS**

**ORDER**

BEFORE	)		)	Friday, the
	)	THE HONOURABLE MADAM	)	12 <sup>th</sup> day of
	)	JUSTICE ROSS	)	September, 2008

THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on the 12<sup>th</sup> day of September, 2008, and on hearing Ben Parkin, Counsel for the Petitioner, and no one appearing on behalf of the Respondents, although duly served:

#116156v1

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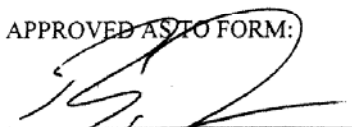
THIS COURT DECLARES that:

1. the City of Vancouver is the legal and beneficial owner in fee simple in possession of the land legally described as: "the West ½ of Lot B adjoining Lots 1, 3, 4, 5, 6, & 7 and the East ½ of Lot B adjoining Lots 8 & A, all of Block 43, District Lot 200A, Plan 197, Group 1, New Westminster District"; subject to the conditions, exceptions and reservations enumerated or referred to in section 23(2)(a) to (j) of the *Land Title Act*, R.S.B.C. 1996, c.250, but free from all other rights, interests, claims and demands; and
2. it has been proven to the satisfaction of the Court that the title of the City of Vancouver is a good safe holding and marketable title pursuant to section 34 of the *Land Title Act*, R.S.B.C. 1996, c.250.

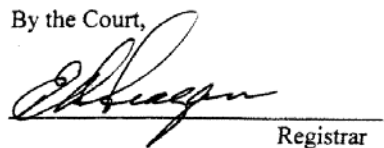
THIS COURT DIRECTS that:

1. notice of this application and the Court's order herein shall be published in the B.C. Gazette as well as in one weekday and one weekend edition of each of the Vancouver Sun and the Victoria Times Colonist on two occasions three weeks apart;
2. this declaration shall not be executed until at least four weeks from the first publication of the notice of this application and the Court's order herein referred to above.

APPROVED AS TO FORM:

  
Counsel for the Petitioner

By the Court,

  
Registrar

#116156v1

NO.: S-084472  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF the *Land Title Act*, R.S.B.C. 1996,  
c. 251, the *Land Title Act*, R.S.B.C. 1996, c. 250, et al

BETWEEN:

CITY OF VANCOUVER

PETITIONER

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA, et al

RESPONDENTS

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ORDER

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Ben Parkin  
CITY OF VANCOUVER - LAW DEPARTMENT  
453 West 12th Avenue  
Vancouver, B.C.  
V5Y 1V4  
(604) 873-5712

FILE NO. 04-0842

#111763V1

DYE & DURHAM COMPANY INC.



COPY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Date: 20080912  
Docket: S084472  
Registry: Vancouver

**In the Matter of the *Land Title Inquiry Act*, R.S.B.C. 1996, c. 251  
the *Land Title Act*, R.S.B.C. 1996, c. 250,  
And  
Certain Property Legally Described as  
"the West ½ of Lot B adjoining Lots 1, 3, 4, 5, 6 & 7  
and the East ½ of Lot B adjoining Lots 8 & A,  
all of Block 43, District Lot 200A, Plan 197, Group 1,  
New Westminster District"**

Between:

**City of Vancouver**

Petitioner

And:

**Her Majesty the Queen in Right of the Province  
of British Columbia, Edwin Jackson Jr., Andrea Philips,  
Sam Jackson and Robert Reid Jackson**

Respondents

Before: The Honourable Madam Justice Ross

**Oral Reasons for Judgment**

In Chambers  
September 12, 2008

Counsel for Petitioner

B. Parkin

Counsel for Respondents

No one appearing

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** This is a petition brought by the City of Vancouver (the "City") under provisions of the *Land Title Inquiry Act*, R.S.B.C. 1996, c. 251 for judicial investigation of the title to certain property that is described in the petition and for a declaration that the City is the legal and beneficial owner in fee simple in possession of the lands subject to the conditions, exceptions and reservations enumerated or referred to in s. 23(2)(a) to (j) of the *Land Title Act*, R.S.B.C. 1996, c. 250, but free from all other rights, interests, claims and demands; for a declaration that it has been proven to the satisfaction of the court on investigation that the title of the City is a good, safe, holding and marketable title to the lands pursuant to s. 34 of the *Land Title Act*, and for directions with respect to publication of the order or decision of the court.

[2] The legal description of the land in question is provided at some length in the petition and affidavits in support of the petition. It is a lane. It has been used as a lane since the early 1900s. It recently came to the City's attention in connection with a redevelopment project that was undertaken that, contrary to the belief of the City, the City does not have title to the whole of that laneway. A search of the records indicated that the laneway in fact is comprised of 10 separate parcels, some of which are shown as owned by the City, but eight parcels are shown as being owned by a Mr. Charles Doering and Mr. Charles Thomas Dupont in the Absolute Fees Register. This Absolute Fees Register was the register that predated the inauguration in the province of the Torrens system.

[3] It appears that there was at least a purported conveyance of these lands in question to the City for use as a lane by Vancouver Breweries, a company of which

Mr. Doering was the president. The conveyance, however, at least with respect to the Doering lands, was never perfected. It is not clear what the situation was with respect to the Dupont Lands. However, there was, as I say, at least a purported conveyance of those lands. This occurred in 1908, and on November 16th, 1908, the City adopted a bylaw declaring the land to be a public lane. It appears on the evidence that the land has been used as a public lane ever since. The land has not been taxed and when the two gentlemen died, the property was not listed as an asset in their inventory of assets with respect to their respective estates.

[4] The City claims on two bases. First pursuant to the ***Transportation Act***, S.B.C. 2004, c. 44, which provides in s. 42(1) that if public money is spent on a travelled road that is not a highway, the travelled highway is deemed and declared to be a highway. It is the City's submission that, pursuant to this section, public municipal money has clearly been spent on the lands in operating them as a public lane and therefore they fall within the terms of that provision. On the authorities that have been provided by the City, I am satisfied that that is the case.

[5] The second principle that the City relies upon is the common law principle of dedication and acceptance. The case authority that the City has provided establishes the requirements for this common law doctrine. In particular those requirements are summarized in a decision of Beames J., ***Dunromin Investments Ltd. v. Spallumcheen (Township)***, 2000 BCSC 383. The principle is that a road can be dedicated by a landowner as a public highway and the elements required to support a common law dedication are an intention to dedicate the land and the intention carried out by way of the road being opened to the public and accepted by

the public. It is clear from the case law that long uninterrupted use of the property in question as a road is evidence that can be used to infer the intention to dedicate. It is clear in this case that since the early 1900s this land has been used as a lane and accordingly the inference can appropriately be drawn. There is, however, in this case more than that, in that there was the evidence with respect to the conveyance of the land to the City, which never was perfected with registration in the registry at the time.

[6] I am satisfied that there was an intention to dedicate and a corresponding acceptance by the public that is established on the evidence and accordingly the City has met the requirements for a common law dedication of the road by the owner.

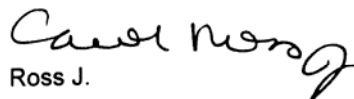
[7] With respect to efforts taken by the City to identify possible parties of interest, the City has been very thorough in my view in terms of its efforts to track down the relevant heirs. The *Land Title Inquiry Act* itself contains a requirement for publication in respect of a decision. It is my conclusion that the City is entitled to the relief that it seeks. It has met, on the materials filed with the petition, the requirements set out in the *Land Title Inquiry Act*, and as I said, I am satisfied that its case is made out on the basis both of the common law and the *Transportation Act*.

[8] The *Land Title Inquiry Act* requires under s. 12(1) that before giving a declaration of title under this *Act*, the court must direct to be published in the *Gazette*, and, if it sees fit, in any other newspaper, in the form and for the period the

court thinks expedient, a notice of the application having been made and the order or decision of the court, and in subsection (2), that the declaration of title must not be signed or executed until after the expiration of at least four weeks from the first publication of the notice, or another period the court may appoint. Pursuant to that section, then, I direct that there be publication in the *Gazette* and in addition that there be a publication one weekday and one weekend on two occasions three weeks apart in the *Vancouver Sun*. And with respect to Vancouver Island, the same in the *Victoria Times Colonist*, and that the relief that has been granted will be deemed not to take effect until four weeks from the first publication of that notice. I think that deals with everything we need to deal with.

[9] MR. PARKIN: Thank you, My Lady.

[10] THE COURT: There is liberty to apply, obviously, if it turns out that we have missed anything, but I think that deals with it.

  
Ross J.