ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Assembly Committee on Housing and Real Estate
Public Hearing, Thursday, December 10, 2015

Thank you, Chairman Jagler and members of Assembly Committee on Housing and Real Estate, for affording me with the opportunity to testify on behalf of AB 459 relating to: adverse possession against the state or a political subdivision. Thank you also to Senator Markelin and Representative Sargent for their work on this important, bipartisan piece of legislation.

Adverse possession, for those unfamiliar with the concept, is a legal doctrine by which an individual who occupies another individual's real property for a specified period of time may gain title to that property. The law, like many in Wisconsin, operates as a statute of limitation, meaning that until the statutory time elapses, a property owner may instigate legal action to remove an individual who is adversely possessing their property. According to Legislative Council, "After the time period expires, if the requirements for adverse possession have been satisfied, a property owner of record is barred from bringing an action to displace an adverse possessor. The adverse possessor may then bring an action to establish right of possession and obtain title to the property."

This legislation, AB 459, eliminates adverse possession of government property in Wisconsin. Under this bill, no property belonging to a state or municipal government, school district, sewage commission, or any other unit of government in Wisconsin, maybe obtained by adverse possession. AB 459 is simple: it explicitly clarifies that adverse possession does not apply to publicly owned land. A person would no longer be able to acquire title to public land by adverse possession.

As Representative Sargent noted in her testimony, if a person has been occupying land for twenty years, they are able to claim ownership of the land if they prove continuous, exclusive possession of that land. This has led to a situation in which local units of government have been forced to purchase back their own land from those claiming adverse possession.

AB 459 has a prospective effect, as the bill would not affect adverse possessors who have already obtained a right to the title to government property by fulfilling the requisite time period and other statutory criteria before the bill takes effect.

Under current law, if a person has been occupying public land for twenty years (since 1998), they can claim ownership of that land if they can prove continuous, exclusive possession of that land.

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AB 459 seeks to remedy this issue by prohibiting the adverse possession of public land. This legislation is supported by the City of Madison, League of Municipalities, Wisconsin Counties Association, and Wisconsin Society of Land Surveyors.

I would be more than willing, at this time, to answer any questions you might have.

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To: Assembly Committee on Housing and Real Estate
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: December 10, 2015
Re: AB 459, Prohibiting Persons from Acquiring Public Lands by Adverse Possession

The League of Wisconsin Municipalities strongly supports AB 459, which makes it explicitly clear that a person may not obtain title to property belonging to the state or a local government based on adverse possession or use. Under current sec. 893.29(1), a person may obtain title to property belonging to the state or a local government if the person adversely possesses or uses the property for more than 20 years and the claim is based on a continuously maintained fence line which has been mutually agreed upon by the land owners.

The doctrine of adverse possession does not make sense for publicly-owned land. Public land is *public* – held open for all to use. Governments should not be compelled to spend resources guarding against and challenging impermissible uses of road easements, bike paths, and park lands. That is why the general rule across the country is that one cannot adversely possess public land.

In 1998, an effort was made to pass legislation ending adverse possession of public land in Wisconsin. Unfortunately, a late amendment to the bill ended up *expanding* the scope of the law. Prior to 1998, roads and a few other specific items were specifically exempted from adverse possession claims. The 1998 legislation abolished those exemptions and provided for adverse possession for all public lands. Consequently, for every existing encroachment on right-of-way in 1998, a clock began ticking.

The current state of the law leaves local governments in a difficult position. There are likely tens, or even hundreds, of encroachments in every community in the state. These might occur quite unknowingly, such as locating a garden or a shed a few feet over the property line. The concept of an agreed upon fence line has been broadly interpreted by the courts and may even include a tree line or shrub row. Cities and villages do not comprehensively monitor these, and, unless there is some public need, they would likely be unaware of their existence or scope. However, if a community does nothing, it runs the risk of relinquishing ownership of that land. If it wants to widen a road, for example, a village may be forced to repurchase its own land from a citizen who has been illegally occupying the right-of-way for over 20 years.

To prevent adverse possession under current law municipalities would need to survey all public lands and remove all encroachments. This would be a considerably expensive undertaking. For example, the City of Madison roughly estimates the cost of surveying alone would run over $1 million. Engaging in such an effort would also needlessly upset residents and spur litigation. Moreover, the process would need to be repeated every few years to guard against further encroachments.

All of this can be avoided by passing AB 459. We urge you to recommend passage of AB 459, and bring Wisconsin in line with the rest of the country. Thanks for considering our comments.

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December 10, 2015

To: Assembly Committee on Assembly Housing and Real Estate
From: Nicholas Zavos, Mayor's Office
Re: Support for Assembly Bill 459

The City of Madison supports AB 459.

The loss of public land through adverse possession is not a theoretical concern. By way of example, over the past five years, the city of Madison has averaged approximately 8 enforcement cases per year. These are just the encroachments we come across due to construction and maintenance issues. Over the same period, we have lost four small pieces of land – a strip next to a park, a small piece at the end of a cul-de-sac.

Adverse possession of public land is not a problem unique to the City of Madison; there are likely encroachments on public land in every community in the state. Larger communities that have full-time attorneys and engineers are probably better situated to deal with this issue than smaller communities with smaller or part-time staff.

The only means of protecting the public's land is to survey all publically-owned property, and remove all encroachments. The city of Madison's engineering department recently completed an estimate on the cost of this. For Madison, surveying alone would cost over $1 million. This does on include the expense of enforcing removal and potential litigation. Not only will this needlessly upset residents and spur litigation, but the process will have to be repeated every few years to guard against new encroachments.

I urge you to support SB 314. Thank you for your consideration.

STATE REPRESENTATIVE

MELISSA SARGENT

48TH ASSEMBLY DISTRICT

2015–2016 Legislature

AB-459: Relating to: adverse possession against the state or a political subdivision.

Committee Members,

Adverse possession involves taking the title, and therefore ownership, to someone else's property without compensation, by holding the property in a manner that conflicts with the true owner's rights for a specified period.

The general rule is that one cannot adversely possess public land as it can occur on public land quite unknowingly by the person possessing the land or by the local unit of government. For example, if a person lives near a city-owned right-of-way or county-owned park, their flower bed, fence or out building could stray partially on publicly owned land.

Due to a change in state statute in 1998, if a person has been occupying public land for twenty years they can claim ownership of that land if they can prove continuous, exclusive possession of the land. This has led to situations where local units of government have had to purchase back their own land from those claiming adverse possession.

Many of us on both sides of the aisle come from backgrounds in local government. Those who have served on city councils or county boards know how thinly stretched our resources are, and how precious staff time is. Should AB-459 not become law, local governmental units around the state would have to survey their entire land areas to see if there are any instances of adverse possession. They would have to complete this by 2018 or anyone adversely possessing public land could legally take ownership.

We have also taken into consideration the interests of private land owners through an amendment to the bill. This amendment makes adverse possession equal to all parties. Just as private land owners would not be able to adversely possess public land, public entities could not claim adverse possession of private land.

This common sense, bi-partisan legislation is an urgent matter, and I would appreciate your support.

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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Housing and Real Estate

FROM: Daniel Bahr, Government Affairs Associate DB

DATE: December 10, 2015

SUBJECT: Support for Assembly Bill 459, prohibiting adverse possession against the state or a political subdivision

Adverse possession is a legal doctrine that allows a party holding another's land to obtain title to that land if certain requirements are met. Requirements necessary to meet adverse possession include:

- The party has exclusive, uninterrupted and continuous use of the land of another.
- The use of land was hostile.
- There was open and notorious actual occupancy of the land.
- The person can satisfy the statutory period of possession.

Adverse possession was not allowed against property owned by the state of Wisconsin until 1931. At that time, the state enacted a new statute that generally allowed adverse possession against governmental entities if the person claiming adverse possession could show 40 years of adverse possession/use. As a result of the statutory action, property owners were able to begin making claims of adverse possession against government-owned land in 1971.

Subsequently, the Wisconsin State Legislature shortened the statutory period for adverse possession against governmental entities to 20 years. Efforts were later undertaken to exempt highway right of ways to adverse possession. Such efforts have not been successful.

Adverse possession of government-owned property is increasingly becoming an issue of concern to counties throughout the state. Not only can adverse possession of county property lead to serious public safety concerns, such as in the case of highway right of ways, but it can also impact long-term county planning and development efforts.

WCA supports the efforts of Senator Marklein and Representative Brooks in their drafting of AB 459 to exempt the state and political subdivisions from adverse possession claims.

Please feel free to contact WCA for further information at 608.663.7188.