



# COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

## Adverse Possession Period Continues to Run During Prior Public Ownership of Property

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**Joshua Lee Smith** – In Massachusetts, a party claiming title to land through adverse possession must establish actual, open, exclusive and non-permissive use of such land for a continuous period of at least 20 years. The Massachusetts Appeals Court recently held in [1148 Davol Street LLC v. Mechanic's Mill One](#), that a cause of action for adverse possession against a private party can begin during prior ownership of the land by The Commonwealth of Massachusetts or a city or town.

The city of Fall River was the record owner of a certain parcel of land (the “Mechanic’s Mill Property”) from 1975 until 1989, when the city sold the Mechanic’s Mill Property to a private party. The Mechanic’s Mill Property was subsequently sold to the named defendant. In 1975, the owners of property adjacent to the Mechanic’s Mill Property (the “Adjacent Property”) began to use an approximately 25,000 square foot strip of land on the Mechanic’s Mill Property along the boundary of the two properties. The Adjacent Property was sold to the named plaintiff in 2007, and in 2008, the plaintiff brought suit against the defendant over the ownership of the strip.

The parties agreed that the plaintiff satisfied the elements of an adverse possession claim for a continuous 32-year period from 1975 to 2007. Therefore, the sole issue before the Court was whether the plaintiff could count the time during which title to the Mechanic’s Mill Property was held by the city toward the requisite 20-year period of adverse use.

The Court recognized that under the common law, a party claiming adverse possession could not count the time title to the land was held by the Commonwealth or a city or town towards the applicable limitations period as adverse possession cannot be claimed against a governmental entity as to public land. However, Massachusetts has explicitly departed from the common law rule by adopting M.G.L. c 260, § 31 (“Section 31”). Section 31 provides a 20-year statute of limitations period for actions for the recovery of land commenced by or on behalf of the Commonwealth. The defendant argued that the exceptions to the statute of limitations for land held for conservation, open space, parks, recreation, water protection, wildlife protection or other public purpose that were added to Section 31 by amendments

indicate an intent by the Legislature that land put to a public purpose could never be subject to adverse possession, and on this basis the limitations period cannot run while the property is held by a public party, which, in this case, would mean that the adverse possession “clock” would not have started until the city transferred the Mechanic’s Mill Property to a private party in 1989.

The Court disagreed, holding that a private record owner of once-public land opposing an adverse possession claim may not invoke Section 31 as a defense. The Court reasoned that while the amendment to Section 31 “undeniably added broad protections allowing the Commonwealth and its subdivisions to recover land held for public purposes, nothing in the statute evinces an intent that such protections also benefit a subsequent private owner.” Moreover, the public policy reasons for adding the broad public purpose language to Section 31 are indicative of an intent to protect land that benefits the general public, and allowing a private party to “take advantage of a law clearly designed to benefit the [Commonwealth] would be inapposite to the purpose of that law.”

Owners and purchasers of real property should always carefully review claims and potential claims of adverse possession. This decision makes clear that any such claims cannot be defended on the basis that the property was once owned by a public entity. In general, property owners interested in avoiding claims of adverse possession should consider registering the property with the Land Court, erecting no trespassing signs or a fence or posting a Notice to Prevent Acquisition of Easement pursuant to M.G.L. c. 187, §§ 3 and 4 (with respect to prescriptive easements). Doing nothing and relying on the love of thy neighbor won’t help to protect your land.