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RESOLVING BOUNDARY DISPUTES
BETWEEN NEIGHBORS



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INTRODUCTION

Of the many controversies that are brought to the attention of cities, few controversies become as emotional and nasty as a boundary dispute between neighbors. Whether the dispute involves a fight over the location of a fence, an overhanging tree branch or the flow of water, human nature seems to compel neighbors to stubbornly defend their property rights (or perceived rights) with ferocity.

For city councils, city attorneys and other public officials, these disputes create no-win situations in which officials are asked and expected to take a side. This expectation is present despite the fact that most boundary disputes are civil in nature and do not involve violations of local codes and ordinances. Nevertheless, quarreling neighbors each expect their local government to reprimand, cite and prosecute the other neighbor, while simultaneously supporting and empathizing with their own position. Obviously, absent violations of local codes and ordinances, local governments should not take a side in the dispute or let a single neighbor dictate the solution. If there is a solution, it will have to be arrived at through mutual understanding and compromise. But, what can city officials do to help neighbors resolve these disputes?

The purpose of this paper is to identify common boundary disputes between neighbors and discuss the legal rules for each dispute. After all, knowing the general parameters of the law can help city officials and city attorneys arrange reasonable and practical solutions before they escalate into court battles. The paper will also briefly discuss common boundary issues between neighboring cities in that boundary disputes are not limited to individuals. Finally, the paper will discuss practical solutions that city officials and city attorneys can suggest to warring neighbors to settle these disputes.

COMMON BOUNDARY DISPUTES

A. *Boundary/Property Line Disputes.*

Property line disputes may be the most common boundary controversy that comes to the attention of city officials. Sometimes, property owners may be concerned that adjoining neighbors are “encroaching” on their property and further, that such encroachment, or trespass, could result in a neighbor gaining legal ownership of a portion of their land.¹ Typically, the dispute arises when one owner decides to make improvements on or near where the owner believes the common property line is located; and the adjacent owner does not agree or is not

¹ A trespasser who uses someone’s property may eventually gain ownership of the property by *adverse possession* or gain the right to use part of the property for a particular purpose as a *prescriptive easement*. To gain ownership of or right to use someone else’s land, a trespasser must occupy it hostilely, openly, exclusively and continuously for a certain period of time set by state law. (See California Civil Procedure Code § 318, providing that the statutory period for California is 5 years; *Steele v. Shuler* (1963) 211 Cal.App.2d 698, holding that adjoining property owner who constructed a garage and driveway under a claim of right upon disputed strip of land and who had been in open, notorious and hostile possession thereof for a period of more than five years, had an exclusive and perpetual right and easement over such land by prescription; See also Rest.3d Property §§ 2.16-2.17)

sure that the neighbor's representation of the property line is correct. Consequently, one or both owners will request that city staff verify the location of the property line.

As a general rule, however, cities have no affirmative duty to verify the location of property lines for property owners. Even in cases where the owner is constructing a building or structure (wall or fence) a city has no duty to verify its location pursuant to Cal.Gov.Code, § 818.6 which provides that public entities are not liable for injuries caused by failure to make inspections or for negligent inspections. Moreover, even if a city were to make a determination as to the location of a boundary line between properties, it is not clear that such a determination is sufficient proof to quiet title between disputing neighbors. (See Payne v. English (1889) 79 Cal. 540, noting that a 'city map' not made until after plaintiffs acquired title to their lot was not admissible against plaintiffs to prove true boundary lines)

As a result, when property owners seek the city's involvement in the resolution of boundary disputes, the city should always recommend to one or both property owners that the property be surveyed by a privately hired licensed surveyor. In situations where only one owner is undertaking the survey, the other owner's cooperation should be encouraged.² Indeed, some cities make explicitly clear to property owners that responsibility for determining the correct property line location lies with the individual property owners or their design professional. (See 2001 California Building Standards, §§106.3.3, 106.4.1 & 106.4.3)

Property owners may verify the location of property lines by (1) hiring a licensed surveyor, (2) by deciding and agreeing with an adjoining neighbor where the line should be, submitting a lot line adjustment application to the city and signing deeds that describe the agreed boundary pursuant to the Agreed Boundary Doctrine,³ or (3) by pursuing quiet title actions through the courts based upon adverse possession, prescriptive easement, etc. in order to determine or re-establish a property line.

B. *Fence and Wall Disputes.*

In many cities, property owners are not required to obtain permits to construct or repair fences and walls between properties. Unlike property line disputes which may arise out of the recording of final maps, cities are often not necessarily involved in creating disputes concerning fences and walls. City ordinances that proscribe height and location regulations do not create an

² In fact, California Civil Code, § 846.5 provides that neighbors should be notified where practicable.

³ "To establish title by agreed boundary, it must be shown that there is (1) an uncertainty as to the true boundary line, (2) an express or implied agreement between the coterminous owners fixing the location of the line, and (3) an acceptance and acquiescence in the line for the period of the statute of limitation, or for a lesser period under such circumstances that substantial loss would be caused by a change of position." (Miller & Starr, California Real Estate (3d ed3 2000) §§ 14:1-14.6, pp. 2-22) Where neighbors agree as to the location of the boundary line under the Agreed Boundary Doctrine or by way of executing quit claim deeds, it should be recommended to the land owners that a written description of the agreed boundary line be recorded with the County Recorder to prevent future boundary disputes. (Needham v. Collamer (1949) 94 Cal.App.2d 609)

affirmative duty on the city to remedy complaints by neighbors.⁴ (See Cal. Gov. Code § 818.6, immunizing a public entity from liability for failure to inspect for the “purpose of determining whether the property complies with or violates any enactment...”) Further, a private landowner has no right to enforce or to recover damages for violation of an ordinance or municipal code because these laws do not give any property rights in adjacent property. (See Miller & Starr, California Real Estate (3d ed3 2000) §§ 14:9, p. 27; See also Morgan v. Veach (1943) 59 Cal.App.2d 682, 688-689)

(1) Division Fences on Property Line

When a fence or wall is built on the property line between properties, both owners have the responsibility to maintain the fence or wall. California Civil Code, § 841 provides that “[C]oterminous owners are mutually bound to maintain ...the boundaries and monuments between them...[and] the fences between them....” These types of fences are commonly referred to as “division fences” because the wall or fence structure is built on the coterminous boundary between the two properties. (See Miller & Starr, California Real Estate (3d ed3 2000) § 14:40(G), p. 93) In such cases, neither neighbor may remove the fence without the other’s consent and both neighbors are responsible for the costs of repair. (Cal. Civ. Code § 841) Routinely city attorneys tell the public that although there is mutual obligation to maintain property line fences in good repair, the state law is not self executing. Members of the public who do not have cooperative neighbors should be advised that they may have to absorb the entire cost to repair or replace a fence and then seek reimbursement through small claims or other court action.

(2) Party Walls

Instances where walls are constructed directly on the property line as a division fence should be distinguished from situations where a wall is located on or at a boundary line and is used or intended to be used by both owners as part of the construction or maintenance of improvements on their properties. Walls used by both owners are more commonly referred to as “party walls” and are normally established and maintained via written agreement between the property owners. (Henne v. Lankershim (1905) 146 Cal. 70, 72; Frowenfeld v. Casey (1903) 139 Cal. 421, 424) In such cases, changes or repairs to the walls are typically governed by the terms of the agreement. (See Miller & Starr, supra at § 14:37, p. 90) In situations where an agreement does not exist, each property owner owns an easement in the party wall. Thus, either property owner has the right to make changes to the party wall provided it does not cause injury to the wall, the structures the wall supports, or impair the value of the adjoining property owner’s easement in the wall.

⁴ See also Clayton v. Rossman Clayton v. City of Sunnyvale (1976) 62 Cal.App.3d 666, noting that the absolute immunity from liability provided by Cal. Gov. Code Section 818.6 is not superseded by the Government Tort Claims Act at Cal. Gov. Code § 815.6 which creates liability for nonfeasance of mandatory duties.

(3) Spite Fences.

In some cases neighbors become so antagonistic with each other that one of them decides to construct or erect a fence or barrier whose only purpose is to annoy or harm the other neighbor. These so-called “spite fences” will, in many cases, not comply with local codes and ordinances concerning building height, design and/or materials. In addition, California Civil Code, §841.4 provides that “[A]ny fence or other structure in the nature of a fence unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property is a private nuisance. In some cases, courts have held that even though the fence does not exceed 10 feet in height, if it was constructed with malice and for the purpose of interference with the neighbors’ enjoyment of their property, it is a public nuisance.⁵ (Griffin v. Northridge (1944) 67 Cal.App.2d 69) Neighbors that believe a wall or fence is a “spite fence” may seek remedy through the courts and are entitled to relief pursuant to state law. (Cal. Civ. Code §841.4) To prevail in such an action, the neighbor that is being annoyed by the fence must prove (1) that the fence was over the statutory 10 foot height limit, (2) that it was maliciously built to annoy the neighbor, and (3) it serves no reasonable purpose. (See Haehlen v. Wilson (1936) 11 Cal.App.2d 437, holding that the construction of a fence above the permitted height limit for the asserted purpose of “stopping trespassers” was reasonable)

C. Blocked Views and Solar Access Disputes.

California law does not provide for the affirmative protection of views, vistas and sunlight to property. Moreover, the blockage of light to a neighbor’s property, except in cases where the blockage is maliciously intended, does not constitute a nuisance, regardless of the impact on the adjacent property owner. (Sher v. Leiderman (1986) 181 Cal.App.3d 867) Thus, property owners have no right to particular views or light over adjacent property in the absence of an express ordinance or easement that protects such views or light. But California law authorizes cities and counties to enact their own requirements that include the recordation of covenants for the protection of light and air access (See Cal.Gov. Code, § 65870 et seq.) and many cities have done so.

California statutory law is silent with respect to the authority for the adoption of ordinances that protect views and vistas. However, city ordinances to preserve views have been upheld as a valid exercise of the police power. (Echevarrieta v. City of Rancho Palos Verdes (2001) 86 Cal.App.4th 472; See also Kucera v. Lizza (1997) 59 Cal.App.4th 1141)

D. Tree and Overhanging Branch Disputes.

Generally, a tree belongs to the owner upon whose land it rests. (Cal.Civ. Code, § 833) When a tree trunk stands partly on the land of two or more adjoining owners, however, each owner owns and is responsible for the tree. (Cal.Civ. Code, § 834) Nevertheless, one landowner cannot modify the tree or trees in a manner that negatively affects the adjoining landowner. (Anderson v. Weiland (1936) 12 Cal.App.2d 730)

⁵ Of course, construction of such a fence in a residential area may likely violate local fence height ordinances as well.

Trees whose trunk stands wholly upon the land of one owner but whose branches, leaves, or roots invade the land of another are considered encroaching trees. Although the tree belongs to the owner whose land it rests upon, those affected by the encroachment may take certain actions.

Owners may remove, up to the boundary line, any encroaching tree's offending branches or roots. (Bonde v. Bishop (1952) 112 Cal.App.2d 1) In Booska v. Patel, the court ruled in favor of a property owner who severed the roots of his neighbor's tree that extended into his yard causing the tree to become unsafe and subsequently requiring removal. (Booska v. Patel (1994) 24 Cal.App.4th 1786) Citing to the Bonde case, the court held that the defendant neighbor had an "absolute right" to sever roots from a neighbor's 30-40 year old Monterey pine tree that had encroached on his property. (Booksa *supra*, at p. 1789)

However, a property owner who enters onto the land of another to cut parts of a tree may be liable for trespass. (Fick v. Nilson (1950) 98 Cal.App.2d 683) Additionally, injunctions will be granted to victims of encroaching trees where the encroachment is a nuisance. (Bonde,*supra* at p. 6) A property owner may also recover for monetary damages caused by encroaching trees. (Id.)

Finally, it should be noted that cities are also permitted to remove trees that encroach onto public rights-of-way when they create nuisances or obstructions to public travel. (Vanderhurst v. Tholcke et al. (1856) 113 Cal. 147; See also Cal.Gov. Code § 38775) Conversely, city-owned or maintained trees that encroach onto the land of another may subject the city, as any other tree owner, to liability for damages.

E. Water & Drainage Disputes.

Diffused surface waters are those falling upon, arising from, and naturally spreading over lands produced by rainfall, melting snow, or springs. They continue to be surface waters until, in obedience to the laws of gravity, they percolate through the ground or flow over the surface of the land into a defined watercourse or stream. After they have been gathered into a natural channel, they become stream waters. (Everett v. Davis (1941) 18 Cal.2d 389, 393)⁶

Under the unmodified civil law rule, the owner of lower-lying piece of property must receive surface waters naturally running from the higher parcel. (63 Cal.Jur.3d § 711, p. 112, citing, Gonella v. Merced (1957) 153 Cal.App.2d 44, 51) However, the upper landowner may not alter the natural system of drainage so as to increase the amount of water flowing to the lower parcel. (Martinson v. Hughey (1988) 199 Cal.App.3d 318; See also Keys v. Romley (1966) 64 Cal.2d 396, upper owner is liable for any damages he causes to adjacent property by discharge of water in an unnatural manner) Moreover, all parties must take reasonable care of their properties to avoid injury to adjacent land caused by surface water flow, particularly in urban areas. (4 Witkin Summary of California Law, Real Property (1987) §798, pp. 975-76

⁶ By contrast, floodwaters are waters that escape in great volume from a body of water and vagrantly overflow adjacent territory. (63 Cal.Jur.3d § 706, p. 103) The law generally gives property owners greater authority to protect their lands from floodwaters.

citing Keys, 64 Cal.2d at 409; See also 63 Cal.Jur.3d §§ 711, p.112, development will lead to expected increases in surface water levels and thus passage of extra run-off is not unreasonable)

Because a lower estate must generally receive naturally falling or accruing surface waters, the owner of a lower estate can be held liable for injuries caused by obstruction of the flow of water. (63 Cal.Jur.3d § 715, p. 115) The upper landowner and any innocent third parties may both recover damages from the lower property owner and seek injunctive relief to remove the obstruction. (Id. §§ 716-17, pp. 115-19) Moreover, if the lower landowner obstructs surface water flow, and a government agency attempting to alleviate the resulting flow problems actually causes greater injury, the lower landowner may be liable for the entire damage. (See Woo v. Martz (1952) 110 Cal.App.2d 559, county's action of cutting dike was necessary and reasonably foreseeable to minimize damage caused by defendant's wrongful filling of drainage ditch, defendant was responsible for all damages)

In Locklin v. City of Lafayette, the California Supreme Court definitively concluded that the law of "reasonableness" qualifies the civil law "free flow of surface water" rule, thus tempering the old rule's relatively strong protection of up-slope landowners. (Locklin v. City of Lafayette (1994) 7 Cal.4th 327, 351-52, citing, Keys, 64 Cal.2d at 409) Under the modified rule, the upper and lower landowners, including public entities, each have a duty to act reasonably when managing surface waters. Courts will conduct a factual examination of the relevant circumstances of each case to determine who has acted reasonably. Specifically, courts will look to, *inter alia*, the amount of harm caused, the foreseeability of the harm, and the purpose or motive of the party causing the harm complained of. (Locklin, 7 Cal.4th at 359) If both the upper and lower landowners are deemed to have acted reasonably, then the upper landowner who changes a natural system of drainage (like a municipality) will be liable in accordance with the general civil law rule. (Id. at 352-53) Thus, every property owner and municipality is required to take reasonable care in using their property to avoid injury to adjacent and nearby properties. Failure to do so may result in liability.

DISCRETIONARY LAND USE APPLICATIONS AND CEQA

City officials and their staff should also be aware of their ability to analyze impacts concerning most of the boundary dispute issues discussed in this paper under their discretionary land use authority or the California Environmental Quality Act (CEQA). Planning staffs should be encouraged to anticipate the neighbors' concerns and potential disputes, and to address them with reasonable mitigation measures that are attached to the project proposed by an adjacent owner.

For example, in a situation where one owner proposes to construct a subdivision on vacant land overlooking an existing neighborhood, the initial study prepared for CEQA purposes may discuss the impacts to aesthetics and views from the development and propose mitigation measures accordingly. Such mitigation measures may include changes to the location or architecture of buildings to conserve views of the existing property owners and the planting of screen trees to block or screen views and maintain the privacy of existing property owners. While not available in every situation where there is potential for a dispute between neighbors,

the ability to condition discretionary land use applications in anticipation of potential future disputes does provide cities with a powerful tool to mediate the disputes.

DISPUTES BETWEEN NEIGHBORING CITIES

Sometimes, disputes involve neighboring cities. A typical situation involves instances when one city makes an extraterritorial acquisition of land within the jurisdiction of another city and proceeds to build something that is contrary to the building or zoning ordinances of the host city. California Government Code sections 53090 through 53095, which generally require that all local agencies comply with the building and zoning ordinances of the cities and counties where their property is located, excludes "cities" from the definition of "local agency." (Cal. Gov. Code § 53090) In fact, the exclusion of cities from the definition of "local agency" has been interpreted by the Attorney General to also constitute an exception to regulation by the host city. (40 Ops.Cal.Atty.Gen 243, 246 (1962)) Thus, cities that construct projects in neighboring cities are not required to comply with the building and zoning regulations of the host city so long as the project is for municipal, as opposed to simply revenue raising purposes.

Although cities and counties are mutually exempt from each other's building and zoning regulations, they may still be required to submit their projects to the host city's planning commission for conformity with the host city's adopted general plan. Government Code Section 65402 (b) provides:

"A ...city shall not acquire real property for any of the purposes specified in paragraph (a) ...nor dispose of any real property, nor construct or authorize a public building or structure, in another city ... if such other city ... has adopted a general plan or part thereof and such general plan or part thereof is applicable thereto, until the location, purpose and extent of such acquisition, disposition, or such public building or structure have been submitted to and reported upon by the planning agency having jurisdiction, as to conformity with said adopted general plan or part thereof...."

Section 65402(b) further provides that the "failure of the planning agency to report within forty (40) days after the matter has been submitted to it shall be conclusively deemed a finding that the proposed acquisition, disposition, or public building or structure is in conformity with said adopted general plan or part thereof...." Although Section 65402(b) is silent concerning a situation where a project is inconsistent with a host city's general plan and there are no reported cases discussing this specific issue, it is possible that such silence can be interpreted to mean that the inconsistency can be duly noted, but the inconsistent project can move forward in the host city.

In addition, cities that find themselves in a dispute with another city over the construction of a project within the jurisdiction of another city or the consideration of a project with impacts on a neighboring city may use the provisions of Government Code §65101 to mediate and resolve the dispute. Section 65101(1) authorizes the creation of joint area planning agencies, planning commissions, or advisory agencies to exercise those powers and perform those duties that the legislative bodies delegate. Section 65101(2) further authorizes planning agencies to

meet jointly to coordinate their work, conduct studies, develop plans, hold hearings, or jointly exercise any power or perform any duty that is common to them. Thus, it is possible for cities to resolve land use disputes with other cities or agencies by forming joint agencies or commissions to study the dispute and formulate solutions.

An example of such cooperation is the working relationship between the City of Ontario and World Airways at Los Angeles International Airport. The two bodies meet monthly, both formally and informally, to discuss issues of mutual interest and coordination related to the Ontario Airport and the use of land surrounding the airport. Such bodies and commissions may not be able to resolve every dispute, but they do encourage open dialogue and the formulation of ideas to resolve disputes.

HELPFUL TIPS FOR DEALING WITH PROPERTY DISPUTES

1. Use the city's land use exaction authority or the CEQA process to anticipate disputes and condition their resolution accordingly. Tools to consider may include the use of landscape and design conditions and restrictive covenants that ensure the conditions are maintained and enforced.
2. If no land use entitlement process is involved, inform the property owners that the matter is a civil matter between the neighbors and that the city cannot compel a solution absent a violation of local codes and ordinances.
3. Make sure there is no violation of local codes and ordinances.

If No. 2 above fails and the council or city manager insist that the city be involved:

4. Anticipate the dispute and be proactive. Listen to both sides and offer to help before the situation gets out of hand - or worse – before it ends up being discussed at every city council meeting.
5. Consider whether this situation can be addressed through the adoption of a local ordinance and if there is the political will to do so. If not, explain the reasons why the city will not consider such an ordinance.
6. Discourage self-help until the neighbors have had the chance to work out the issues.
7. Offer to provide neighbors with information that may help them discuss and settle the dispute, including assessor parcel information, building permit records and available aerial photos.
8. Refer the parties to a local mediation service. The city may wish to pre-qualify such services to assure that mediators understand the city's role in these disputes.
9. Offer to have city representatives act as conciliators for the grievance and suggest practical solutions and alternatives.
10. Make sure that the city has an exit strategy for their involvement and that the strategy is clearly communicated to the neighbors. If the parameters of city involvement are not clearly communicated at the beginning of the city's involvement, the city may find itself dragged into the dispute in perpetuity.