

Lot lines, fences and border disputes are by far the most frequently discussed subject matter the Department of Community Development deals with when working with City of Neenah residents. It is our hope the following article is useful to those who seek the answer to the most common property owner question. **What do I own?**

Brian Walter

City of Neenah Chief Building Inspector

### **Loathe Thy Neighbor?**

**By Hillary Johnson**

**Reprinted with permission of "This Old House Magazine" Oct. 1999 issue**

**[www.thisoldhouse.com](http://www.thisoldhouse.com)**

#### **When property issues arise, avoid a fight by knowing your rights**

Jane Doe, as we will call her, is a busy Manhattan book editor who's married, living in suburban New Jersey – engaged in a modern-day feud with her next-door neighbor. Understandably, she requests a pseudonym before she will tell her story.

The problem began when a portion of a hickory tree in her neighbor's yard crashed through Jane's garage roof one night last March after a heavy snowfall, taking out an upstairs dormer on its way down. Ms. Doe discovered, to her surprise, that her neighbors were not bound to pay for the damage, because such an accident is generally assumed to be an unforeseeable act of God. Jane's insurance covered the garage repairs, but she was still out the \$500 deductible. Hoping her insurer could recover the money from her neighbors' insurer, she wrote her agent a letter, alerting him to the fact that the tree had actually been noticeably fragile for some time and that the tree's owner had been negligent in its care.

Jane isn't sure what happened after that, but she suspects that a copy of the letter somehow made its way to her neighbors. "We'd never had a close relationship, but let's just say this put a chill on things," she says today. In the months since, her formerly bucolic home life has become fraught with suspicion and unease. "The wife has not spoken to me," says Jane. "The kids are obviously completely turned against me. I see the husband on the bus to the city sometimes, and I want to walk in the opposite direction – it's like running into an old boyfriend!"

Stories like Jane's are legion today, but disputes between neighbors are as old as the Bible. Over time they can grow until they threaten the tranquility of our most valued sanctuary: our home. And when neighbors fail to resolve disputes with some measure of goodwill, the problem is very likely to escalate, perhaps even to the point of litigation. Don Thompson, a retired trial judge in Washington State who has adjudicated numerous property cases, says they're "among the most bitter – right up there with child custody and divorce disputes."

Legal experts are emphatic that the easiest way to avoid one of these destructive squabbles is to face the problem squarely – and quickly – by talking to your neighbor. They also agree that litigation tends to harm both parties. "Even if you win the lawsuit," says William T. Lynn, a Tacoma-based land-use attorney, "you end up heartsick about the role it played in your life."

Inevitably, however, conflicts arise for which there are no obvious solutions. In such cases, neighbors who possess a working knowledge of their rights and responsibilities are more likely to handle themselves with civility, and to avoid debilitating court battles.

Here is a sample of some of the most common categories of neighbor spats, and the rights and remedies available to property owners.

## Boundaries

Little is more primal than land ownership, so it is not surprising that the most hard-fought battles tend to be about boundaries. Generations ago, property lines in some rural areas were often agreed upon with a handshake, which could cause headaches for contemporary owners who need to define the extent of their land. People who live in cities or suburbs have less to worry about since boundaries were usually well-documented. Moreover, says Tacoma attorney Lynn, “In urban areas, the fence is usually where the property line is.” An important rule of thumb, however, no matter where you reside: Don’t assume anything. In Westchester County, New York, a woman recently took her real estate agent’s word that her neighbors’ fence defined the boundary between the two houses. Shortly thereafter, she hired a tree service to chop down five mature spruce trees on her side because she wanted more sunlight in her dining room. Unfortunately, the actual property line extended 15 feet beyond her neighbors’ fence, and the trees belonged to them.

One of the tree owners – let’s call her Ms. Smith – was working in her basement that day. “It wasn’t until my son came home from school that I realized what had happened,” she recalls. “I was in total shock.” Within the hour, Ms. Smith and her husband were sitting in their neighbor’s living room, their property survey on the coffee table. “Initially, our neighbor didn’t believe she had done anything wrong,” Ms. Smith recalled. “We had to review all the documents to show her that the trees were on our property. She was pretty apologetic about it.” Rather than take legal action, the Smiths allowed their neighbor to pay for the installation of a dozen 12-foot-tall Norway spruces – at a cost of \$6,000. “She complied quite nicely,” Ms. Smith says. “Our backyard actually looks better.”

When boundary lines are hazy, either because the property deeds are confusing or the existing surveys are ambiguous, the happiest outcome is when neighbors simply decide on a boundary line and put the agreement in writing. They must also establish some kind of physical marker for it, man-made or natural; a tree will suffice. When neighbors can’t agree, their lawyers may propose a buffer zone of, say, 10 feet of no-man’s-land on either side of a proposed property line. “If you can agree to that buffer zone,” Tacoma attorney Lynn says, “the exact property line is no longer as important.” Hiring a surveyor to verify the location of the line is another option, but surveyors can charge from \$500 to a few thousand dollars. Still, if you are considering construction – or destruction – compare a surveyor’s fee to the \$6,000 cash payment for the Norway spruces.

## Adverse Possession & Easements

One of the most complex aspects of property law has to do with the doctrine of adverse possession, a concept harkening back to squatter’s rights. Believe it or not, trespassers may actually acquire rights to some portion of their neighbor’s land simply by using it over a period of years. The trespasser may know the land is not his, but he uses it anyway. He plants a garden, builds a garage, pours a concrete drive, and perhaps most importantly, pays property taxes on that land due to a misassessment. When the trespass is “open and notorious” – usually for a period of five to 30 years depending on the statute of limitations – and the landowner does nothing to stop the trespass, he could lose his rights to the usurped portion of land.

In her helpful handbook, *Neighbor Law: Fences, Trees, Boundaries & Noise* (Nolo Press, 1998), attorney Cora Jordan writes that the easiest way to avoid a trespasser’s claim is to simply give your neighbor permission to use your land. An example used by Jordan: You discover that the garden your neighbor has been tending actually encroaches on your property. Presuming you don’t want to make an issue of it, you point that out to her, but tell her you don’t mind. Then put it in writing. “The chain has been broken,” Jordan notes. “She can tend that garden for 40 years and still never acquire a legal claim. . . . if she has your permission.”

In general, adverse possession disputes favor the property owner. “The true owners have to be fairly negligent about protecting their rights,” says Malibu property attorney William Sampson. Nonetheless, mere anxiety about adverse possession can sour relations between neighbors. Another Westchester couple – the Joneses, let’s call them – decided to erect a fence around their property to protect their gardens from hungry deer. When the neighbors heard about it, though, they realized the fence would hug their driveway and obstruct their views, so they asked the Joneses to set the fence 10 feet in. The Joneses declined. “We told them, ‘We need to stick to our property line,’ because we were worried that if they maintained that 10-foot section, it could become theirs in time. But they quit talking to us. Their kids stopped playing with our kids. I went through several months of feeling just sickened over this. Now we’re thinking of taking the fence down, but it seems like the damage is done.” If the Joneses had known that a written agreement would have protected them (and if they’d anticipated how the fence would affect their friendship) they probably would have reconsidered.

An easement, written into a deed or the purchaser’s title-insurance document, gives your neighbor the legal right to use (but not own) your land in some way. But a verbal agreement struck between neighbors is not binding on future owners. “People who share driveways, or who know the fence is two feet off the property line – all these things done with a handshake – have found the agreement out the window when someone dies or moves,” notes Minneapolis-area attorney Don Sjostrom. The solution: Always document easement agreements.

Experts say the most litigious boundary disputes arise where property values are highest – usually waterfront areas. “If the value of the land is worth thousands of dollars per foot, people worry about every foot,” says Lynn. Retired Judge Thompson recalls litigants who were fighting over a few feet of lakefront in Washington State: “Either of them could have bought it for \$75,000, but they each spent more than that for court fees, attorney fees, and expert witnesses.” Malibu attorney Sampson calls this the “alpha wolf syndrome,” which often results in the kind of litigation that, he jokes, will help him send his daughter to private college.

## **Fences & Trees**

### **Fences**

Fences constitute another source of conflict, none more so than the proverbial “spite fence.” Ugly, oversized, and mean-spirited, the spite fence is a property owner’s version of road rage. Often, spite fences are erected by the loser of a dispute, presumably to blot forever from his sight the neighbor who trumped him, but it’s also meant as a kind of punishment – a long season in hell for the other guy. Spite fences have become so common that 10 states have statutes outlawing them. Even without a statute, however, victims can fight back. Such fences are considered nuisances in every state.

Lawyers love to tell spite-fence stories. One of the best was recounted by attorney William Lynn. Two Seattle-area brothers were fighting over the division of inherited land. Eventually, one brother built a spite fence – a ghastly cinder block wall with exposed steel supports. The court ordered that the “fence” be destroyed. “Unfortunately,” says Lynn, “that same guy figured out that although he couldn’t construct a fence taller than 8 feet, he could put up a building as tall as 25 feet. So he built a structure 25 feet high – and 2 feet deep. It was near his pool. He called it a ‘cabana.’”

Perhaps surprisingly, when neighbors share an existing “boundary fence” (a fence straddling a property line), they are, by law, co-owners of it. Neither party may tear the fence down without the other’s permission, and they are equally responsible for its maintenance. (If you choose to put a boundary fence up, however, and are the only party who uses it, you’re solely responsible for it.) Neighbors may make their own agreement in writing, regarding upkeep – e.g., one may agree to let the other choose a high – quality replacement fence if he pays the difference in cost from an ordinary one. But when one neighbor moves, any prior agreement is nullified.

## Trees

Besides his house, little may be more beloved to a property owner than a handsome, shade-producing tree—putting trees at the center of some of the most frenzied neighbor disputes. “People go to war over trees,” says California lawyer Sampson.

For the most part, laws regarding trees are unambiguous. For instance, if the complete trunk of a tree stands on your property, the tree belongs to you; if some portion of its boughs and roots reach into your neighbor’s lot, she has the right to trim them – up to the property line only. But she would be wise to engage a professional tree service, since injuring a tree can be a liable offense. And the tree owner must give permission if, in order to perform the work, the arborist must use a ladder, climb the tree, or go onto his property.

Of course, purposely destroying a neighbor’s tree is illegal and could result in criminal charges. Seventeen states allow for fines or jail sentences, and most states allow for double, or even triple, damages. Louisiana judges have awarded extra money for “mental anguish” if the tree has profound sentimental value.

How do courts measure the value of a tree? Compensatory damages reimburse the tree owner for the cost of replacing it, or, if that’s impossible, for diminished property value assessed by experts like arborists, landscape architects, and real estate agents. Replacing a fully mature tree can cost from \$10,000 to \$20,000.

Old or sick trees pose another set of liabilities and costs. As in Jane Doe’s case, most tree owners aren’t liable for the damage a fallen tree might wreak. Generally, if the court believes someone has reason to suspect their tree might cause damage, they are liable, but the courts don’t ask that tree owners be tree experts. And because they rarely pay for maintenance or removal of dangerous trees, insurance companies almost encourage owners to ignore problem trees.

When a tree trunk straddles a property line, it is a “boundary tree” and belongs to both neighbors. Sometimes one will request permission from the other to remove a boundary tree in order to build an addition, or add a pool, deck, or tennis court – but if the issue goes to court, the home owner, writes Cora Jordan, will “likely learn that the judge considers tennis less necessary than he does.”

### **Resolving Conflicts**

In property disputes, prevention is the best treatment. Should you discover your neighbor building a fence or garage on your property, Jordan recommends immediate action. Once it is built, you may have difficulty getting it removed. “Judges do not like to order property destroyed,” she notes, and you may only get money damages. Many common disputes can be resolved by complaints to the authorities. Animal-control agencies are helpful with the problem of barking dogs, for instance. It’s a police matter when humans make the noise, but police tend to give a revving engine low priority “when people are raping, robbing and pillaging,” says attorney Sjostrom.

If a conflict can’t be worked out between two neighbors, a mediation service is a cheap alternative to litigation. Failing an easy resolution, some matters may go to small claims court, with or without the help of lawyers. Sometimes, local justices practice informal triage. “I send them out into the hall to talk about it,” says Robert Ferris, a town justice in Beekman, New York. If the case goes to trial, costs spiral, as does resentment – especially when a decision is rendered, which inevitably disappoints one party. A word of caution: Strive to behave in a calm, civil fashion at all times. The concept of “reasonableness” is paramount to a judge’s ruling. Thompson recalls a dispute over 5 feet of property. One hotheaded litigant dumped a buzzing beehive onto the contested land that his neighbor had gardened for 10 years.

Thompson ruled against him. “It was a close case, and that swayed me,” he says. “His neighbor won under adverse possession.”

Of course, a friendly chat is the best way to ward off conflicts. “Meet your neighbors, break bread with them,” says Sampson. “The problem with litigation is, when the suit’s over, you’re still neighbors.”