

Chapter 19: Property Ownership

Is a proposed development project entirely located on land owned by the applicant? You might be surprised by how often the answer to this question is no or maybe. In fact, we encounter this issue frequently enough that verifying property ownership has become a standard part of our detailed review of proposed development projects.

ADVERSE POSSESSION

To understand how adverse possession works consider the following scenario. You bought your home 25 years ago. The previous owner showed you the property boundaries. You built a fence along these boundaries and you've had a garden in the northwest corner for the past 25 years. You then learn that the previous owner was wrong about the boundary and your fence and garden extends ten feet onto a proposed development site. Given these facts and the legal precedents established in your state, you may be able to lay claim to the ten feet through adverse possession. If you win then you become the owner of the additional ten feet. Again, adverse possession laws vary from state to state. So check with a good title attorney in your state should you wish to pursue an adverse possession claim.

COVENANTS, CONDITIONS & RESTRICTIONS

Some deeds contain restrictions on how a property may be used. From time to time I get a call from someone who just learned that the field next to their home is proposed for development, which they find surprising since they'd heard that the previous owner always wished the property to remain undeveloped. I urge the caller to look at the current and prior deed for any covenants, conditions, or restrictions (CC&Rs) limiting how the property can be used. Perhaps the prior owner included a condition in the deed requiring that the property remain forever wild.

If a proposed development site is part of a previously approved subdivision then you should take a look at the plat and other documents created through the subdivision process. Both the plat and supporting documents may contain CC&Rs not shown on the deed. The plat can usually be obtained in the same office where deeds are kept. Other documents would be in the records at the local planning and zoning office.

Finally, you should consider having a title search run on the property to identify any restrictions or encumbrances on the use of the property.

EMINENT DOMAIN

If government wishes to build a road or landfill on your property and you refuse to grant permission, then the agency may resort to eminent domain to take your property with just compensation at fair-market value.

Generally, government agencies will exhaust efforts to obtain property cooperatively or they will look for ways of modifying a project so the use of eminent domain is no longer necessary. Citizens

have blocked the use of eminent domain by showing that it is not needed for a “public” use, such as a new road. However, only a few state constitutions limit the exercise of eminent domain strictly to projects with public uses. Nevertheless, it is very unusual to see eminent domain used for a private development project. For example, in South Carolina eminent domain was used for redevelopment of a blighted, urban area. The proponents wanted part of the area to go to the state university (a public use) with the remainder going to private companies for industrial development. The courts approved the use of eminent domain for the university but not the private industrial project.¹³²

HOW TO OBTAIN A DEED

In most states, deeds are kept at the county seat (capital). The specific agency responsible for maintaining deeds and other property records may be called the land records office, the recorder’s office, the register’s office, etc.

To obtain a deed you will need the *Liber* and *folio* reference, which is latin for book (liber) and page (folio). The staff at the land records office can help you obtain the deed reference and explain how you can get a copy of the actual deed. They may direct you to a set of maps showing the boundaries of all property within the county. Within each property boundary you may see the liber and folio reference. If you just see a parcel number, like p. 6, then you will need to consult another reference to obtain the liber and folio reference.

In some states and localities property information is available online. In my home state of Maryland you can determine who owns a specific property online. A substantial amount of information about the property and the owner is also available through the internet. You can even view subdivision plats online.

INTRUSION ONTO YOUR PROPERTY

If your property adjoins a proposed development site and you believe a portion of the project extends onto your land, then the impact to your quality of life can be quite substantial. If you suspect that this might be the case then there are several steps you can take on your own.

1. If you have the deed for your property then look at the boundary description. If you lack the deed then see *How To Obtain A Deed* below. The boundary description usually starts with something like “Beginning at a point situated at the centerline of Main Street...”
2. If you are fortunate the boundary description will reference a distinctive landmark at the point where you believe the development site extends onto your property. The landmark might be an iron pin or stake, a large tree or rock, and so forth. If such a landmark exists then it should be a simple matter to determine who owns what.

¹³² Edens v. City of Columbia, 228 S.C. 563, 91 S.E. 2d 280 (S.C. 1956)

3. In the absence of a landmark along the disputed boundary, then see if your deed references another distinctive point which is a specified distance from the point of contention. You may then resolve the dispute with a tape measure and a compass.

Keep in mind that the amateur survey techniques described above are just that. Boundary surveys require skill and the right equipment. For example, you need to know how to adjust compass readings for magnetic declination and how to adjust distance measurements for slope. Equipment such as a nylon tape and a Global Positioning System (GPS) may not be sufficient. Nylon tape measures stretch and most GPS units are not precise enough for boundary work.

You should view these initial steps as just that. If these simple steps indicate that the project site may extend onto your property then notify the applicant. If the applicant fails to provide you with satisfactory proof as to the boundary location, then contact review staff and ask that they direct the applicant to do so.

I also suggest determining if your property boundary was surveyed in the past. If you recently purchased your property then the boundary survey may be among the documents you received. If not then ask the title company or attorney who handled the property transfer. If your property was surveyed, then ask the surveyor to help you determine if the development project extends onto your land.

ROADS & RIGHT-OF-WAY

Occasionally, I receive a call from someone who just learn that a driveway or road is about to be built through their property, without their permission. Typically, those wishing to build the driveway or road will claim they have an easement or right-of-way through the caller's property. As a first step, I urge the caller to check their current deed, as well as prior deeds, for any language granting a right-of-way or easement. Of course, I also suggest that they ask those wishing to build the road to demonstrate why they believe the caller's permission is not required. We then share the documentation with a good title attorney in our network to learn what rights the caller has in the matter.

A right-of-way exists along many public roads. The right-of-way may extend ten- to fifty-feet beyond the shoulder of the road. When the road was built the right-of-way was set aside for future maintenance work or to add lanes to the road at some point in the future. If a right-of-way does not exist then the permission of adjoining property owners must be obtained to widen the road, or government must resort to the use of eminent domain to take the required property (with compensation at fair-market value). Right-of-ways and easements may be described in the deed for properties adjoining a road or the deed for the road bed.