

DATE:

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POLICY
APPROVED BY:



Dir. of Planning and Development Services

POL- 6620 Encroachment

This policy applies to the definition of encroachment and provides an administrative process for resolving encroachment issues:

1. Definition of Encroachment:

"An encroachment is a gradual entering on and taking possession by one of what is not his own; an unlawful gaining upon the rights and possessions of another". It may also be defined as an intrusion, occupancy or use of another's land by a gradual or partial assumption of right to do so. The maintenance of such an encroachment is a continuing trespass or nuisance and the party injured thereby can maintain action although not in possession when the original trespass was committed. Before an encroachment has ripened into a right by adverse possession, the owner of the land encroached upon may use land in the same manner that he might have used it if the encroachment did not exist, and the encroaching owner has not the right to object to, or any remedy for, any proper use the owner encroached upon may make on the property. Thus when one puts beams into another's wall, he cannot complain when the latter takes down the wall. The owner of land encroached upon by a wall may use the same without contributing to the cost of its erection, and it thereby does not necessarily become a party wall. In absence of estoppel the owner of the land encroached upon can not be compelled to convey title to such part to the adjoining owner upon his payment of its value. When soil or other material slides upon adjacent land, the adjoining owner may compel its removal, but has no right or title to such material.¹

2. Process for Resolving Encroachment Issues:

Where a fence encroachment is present there is an issue as to adverse possession and whether the adjoining lot owner has some ownership interests for purposes of RCW 58.17.165. Accordingly, the solution must be either to extinguish any ownership interest the adjoining plat owner has in this property, or to gain the consent of the adjoiner to the plat. In *Halvorsen vs. Bellevue*, failure to resolve an encroachment will result in later invalidation of the plat. There are a number of options for the plat owner to cure this problem:

1. The plat owner could apply for and get a boundary line adjustment which would move the property line to reflect where the fence is currently standing. Before you advise the owner that this is a viable option, however, you should check to make sure that the lot remaining conforms with the minimum lot size restrictions and setback requirements;

2. The plat owner and all owners of interest including the adjoining landowner, could sign the final plat mylar;

3. The plat owner and all owners of interest could quit claim all interest in the strip of land on their lot containing the fence, and thereby extinguish or disclaim any ownership interest in that strip of land. The strip then would not be within the plat boundaries. However, the adjoiner must sign the quit claim deed accepting the encroaching area to the fence;

4. The plat owner could enter into a Common Boundary Line Agreement. This agreement would acknowledge the fence may not necessarily represent the true common boundary line. That said line would be governed by the legal description of record. That both parties release any claims of adverse interest resulting from said fence. That the adjoiner who is encroaching will have the use of said area of encroachment until such time as a new fence is erected by either party, and that such new fence will follow the true common boundary line as field surveyed by a surveyor licensed in the State of Washington;

5. The plat owner could enter into a License Agreement (easement);

6. The plat owner could enter into a Temporary Easement;

(NOTE: all of the above resolutions require the signatures of all owners of interest and the recording number of any agreement must be cited on the plat or short plat in the vicinity of the agreement area);

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7. The county may accept a letter from the adjoining landowner stating that he or she has no ownership interest in the property. This letter would then be recorded with the County Auditor. (The County has accepted such letters in the past when the property owner has refused to sign the plat mylar.) The letter must contain the quarter/quarter section and the legal description for indexing and title tracking purposes;

8. As a last resort the plat owner could use the legal recourse of the courts and bring a Quiet Title action to the encroached area.