

Boundary Line Problem? Don't Wait!

Mar 01 2011

Practice Area: Construction Law and Litigation

Robert Frost wrote that “good fences make good neighbors,” but if your neighbor’s fence is on your land, you should act immediately. Boundary disputes are common and often arise out of one or more parties’ mistaken belief as to the location of boundary lines. Sometimes neither party really “knows” what the real line is. Other times it is simply “unknowable.” Many times if neighbors know there is a dispute about the location of the line, they may tacitly agree to a line and let things go out of neighborliness.

However, a recent Wisconsin Supreme Court case, *Northrop v. Opperman*, 2011 WI 5, shows that this can be good or bad. The boundary dispute in the case first boiled over in a series of surveys and lawsuits in the 1910s. Then for almost ninety years, all of the landowners of the disputed properties treated the boundary as if it was in the middle of the road between the properties. In 2005, a lost government marker was discovered that contradicted the parties’ presumed boundary. The marker suggested a boundary which moved a road and an additional 600 feet from side of the old boundary line to the other.

Another lawsuit ensued. The Court concluded the deeds and government monuments did not clearly establish the boundary line, so the boundary line should be established from the best evidence available. Interestingly, the Court ultimately abandoned a more technical doctrinal approach to resolving a boundary line dispute. Instead, the Court determined that the best evidence of the boundary was the what the parties had believed and acted upon over the course of the many preceding years. At the end, the Court essentially ruled that the boundary line will be what the parties have always treated it as over the years even though neither really knew where exactly it was according to surveys, landmarks and deeds.

The case shows that acquiescing to a line can be detrimental or beneficial, depending on what side of the line you are on. Surely, because the strength of an acquiescence argument grows with time, owners should promptly address any inkling of a boundary issue. The passage of time can—and often times, does—make a material difference as landmarks and memories fade and an acquiescence argument proportionately grows.

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