



NEW YORK TREE LAW 26TH ANNUAL RELEAF CONFERENCE JULY 27, 2018

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Boundary Lines

- Record Boundary
- the description of the property in the deed can be ascertained with certainty upon an actual survey.
- Lines of Occupation
- The conduct of the parties alters the location of the record boundary or
- The party's conduct fixes the location when the description in the deed cannot be ascertained with certainty

Lines of Occupation



- Doctrines Relating to the Conduct of the parties with respect to a common boundary line
- Practical Location (Acquiescence)
- Parol Agreement
- Estoppel
- Adverse Possession

Landowners' Rights

- Air Rights
 - Air rights are incident to the ownership of the surface property -- the right of one who owns land to utilize the space above it. This right has been recognized as an inherent attribute of the ownership of land since the earliest times as reflected in the maxim "[cujus] est solum, ejus est usque ad coelum et ad inferos" ["to whomsoever the soil belongs, he owns also to the sky and to the depths"]. *Macmillan v. C.F. Lex Associates*, 56 N.Y.2d 386 (1982). [internal citations omitted]

Landowners' Rights

- Lateral Support
- “As between the proprietors of adjacent lands, neither proprietor may excavate his own soil, so as to cause that of his neighbor to loosen and fall into the excavation. **The right to lateral support is not so much an easement, as it is a right incident to the ownership of the respective lands.**” *Village of Haverstraw v. Eckerson*, 192 N.Y. 54 (1908).



Landowners' Rights

- Encroachments
 - “Tree branches and roots, which encroach can be trimmed back, but such right does not extend to the destruction or injury of the main support system of the tree.” *Fliegman v. Rubin*, 1 Misc. 3d 127(A) (Sup. Ct. App. Term 2nd Dept, 2003)



Landowners' Rights



- **Profit a pendre:**
- consists of a right to take part of the soil or produce of land in which there is supposable value.
- It is corporal in nature and capable of transport

Landowners' Rights

- Trees
- Ownership depends on the ownership of the land on which the tree grows
- Tenancies
 - Joint
 - In Common
 - Entirety



Landowners' Rights

Body of the Tree

- “the tree is wholly the property of him upon whose land the trunk stands”
- *Hoffman v. Armstrong*, 48 N.Y. 201 (1827)

Roots of the Tree

- “If a tree grows in a hedge that divides the land of A and B, and by its roots takes nourishment in the land of both, they are tenants-in-common.” (citations omitted.)
- *Debois v. Beaver*, 25 N.Y. 123 (1862)

Landowners' Rights

- “Tenant-in-common” or Boundary “Line Trees”
 - “Ordinarily a tree trunk is the sole property of the one on whose land the trunk is situated.”
 - *Hollenbeck v. Genung*, 198 A.D.2d 677 (3rd Dept 1993);
 - *O’Shea v. Shanzer*, 40 Misc. 3d 1224(A) (Third District Suffolk Co., 2003);
 - *Hileman-Rizzo v. Krysty*, 10 Misc. 3d 135(A) (Sup. Ct. App. Term 2nd Dept 2005).
 - Once the tree trunk extends over the boundary it becomes a “tenant-in-common” tree. *O’Shea*, Supra, *Hollenbeck*, Supra., *Fliegman v. Rubin*, Supra.

Landowners' Rights

- “Tenant-in-common” or Boundary “Line Trees”
- “Overhanging branches and the fruit upon them are the property of the tree’s owner. *Hoffman v. Armstrong*, 48 N.Y. 201 (1827)



Landowner's Duty

- As a general rule, landowners owe a duty to keep their land in a reasonably safe condition considering all the circumstances. *Newman v. City of Glens Falls*, 256 A.D.2d 1012 (3rd Dept 1998).



Landowner's Duty: GOL §9-103

- “an owner... owes no duty to keep the premises safe for entry or use by others for:
 - hunting,
 - fishing,
 - organized gleaning
 - canoeing,
 - boating,
 - trapping,
 - hiking,
 - cross-country skiing,
 - tobogganing,
 - sledding,
 - speleological activities,
 - horseback riding,
 - bicycle riding,
 - hand gliding,
 - motorized vehicle operation for recreational purposes,
 - snowmobile operation,
 - **cutting or gathering of wood for non-commercial purposes or**
 - training of dogs,
 - or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes;



MAINTENANCE OF TREES: PRIVATE PROPERTY

Maintenance of Trees

- “an object supported from the place of annexation carries the title to the whole thing so annexed, even if it protrudes over and across a vertical boundary line. This applies to tree branches which overhang a neighbor's land... While the owner of land so overhung may cut off the branches above his land (internal citation omitted), he cannot, in removing the nuisance, appropriate the materials, and convert to his use the severed branches, or fruit thereon. (internal citation omitted)” *Hynes v. NYCRCo.*, 188 A.D. 178 (2nd Dept 1919).

Maintenance of Trees

- “Where a tree is located so near the line of an adjoining landowner that the branches overhang, the adjoining landowner may resort to self-help in the first instance, to cut off overhanging branches.”
- *Zimmerman v. Fredericks*, 2015 NY Slip Op 31991 (U) (Rye City Ct., Westchester Co.)

Maintenance of Trees

- “The right to self-help extends to ordinary trimming and clipping, where this burden is not unreasonable, since the branches are readily visible and easily cut. Permissible self-help does not extend to the destruction or injury to the main support systems of the tree ; nor does it extend past the property line.”
- *Zimmerman v. Fredericks*, 2015 NY Slip Op 31991 (U) (Rye City Ct., Westchester Co.)



MAINTENANCE OF TREES: PUBLIC PROPERTY

Maintenance of Trees on Public Property

- “A municipality owes a duty to maintain and inspect trees on its property which border streets and roadways.”
Newman v. City of Glens Falls, 256 A.D.2d 1012 (3rd Dept 1998).



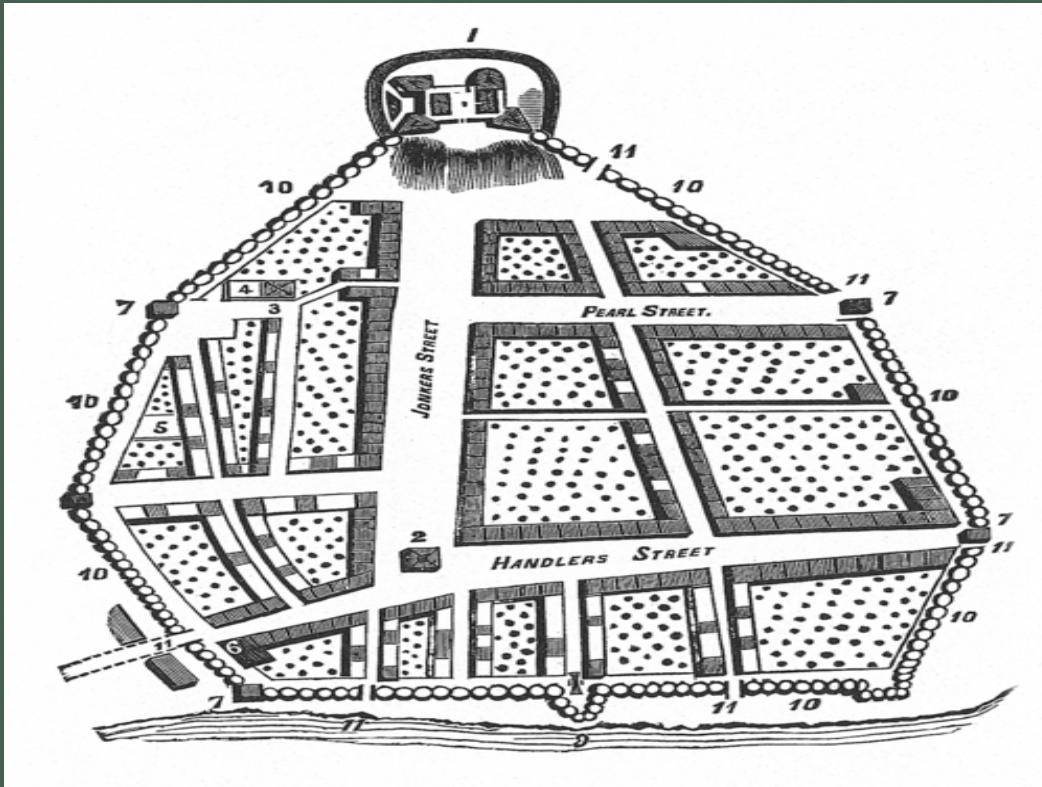
Determining public or private ownership

- Sometimes not clear who owns the property where a dead or diseased tree is located
- Land underlying Highways, Streets and roads are not always owned by the municipality that maintains the road
- Land underlying a highway, street or road may be subject to an easement for highway purposes, with the fee remaining in the adjoining landowners.

Determining public or private ownership

- In New York, an easement for highway purposes is presumed when there is no clear proof that the municipality acquired fee title to the land underlying the highway or road. *Bashaw v. Clark*, 267 AD2d 681 (3rd Dept 1999).
- The tree may be growing on private property, but overhanging the public highway.

Determining public or private ownership



- Dutch Roads
- Fee in the Sovereign
- Map of the City of Albany in 1695

Determining public or private ownership

- The presumption of an easement is from the English rule of law
- Under Dutch law, the presumption is that the street or roadbed is owned by the municipality.
- Since New York City was first established as a Dutch city, many, if not all of the streets in the City of New York are owned by the City.



Sidewalks

- NY Vehicle & Traffic Law § 144. Sidewalk
- That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.
- *Williams v. State of New York*, 34 A.D.2d 101 (3rd Dept 1970)
- "A highway is not limited to that portion traveled by vehicles, but also includes a sidewalk."



Sidewalks

- *Garricks v. City of New York*, 1 N.Y.3d 22 (2003)
- that where a municipality has enacted an ordinance requiring abutting landowners to remove snow from sidewalks "it may, before taking any action itself, wait a reasonable time for them to perform their legal duty"
- Of course, such an ordinance does not relieve the municipality of its obligation to maintain sidewalks in a reasonably safe condition and, where property owners fail to comply with the ordinance within a reasonable time, the municipality must either enforce the ordinance or undertake the necessary work itself.

New York City Administrative Code

- Section 7-210 Liability of real property owner for failure to maintain sidewalk in a reasonably safe condition.
- a. It shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, to maintain such sidewalk in a reasonably safe condition.

New York City Administrative Code

- Section 7-201 Actions against the city.
- (2) No civil action shall be maintained against the city for damage to property or injury to person or death sustained in consequence of any street, highway, bridge, wharf, culvert, **sidewalk or crosswalk, or any part or portion of any of the foregoing including any encumbrances thereon or attachments thereto**, being out of repair, unsafe, dangerous or obstructed, unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition, was actually given to the commissioner of transportation or any person or department authorized by the commissioner to receive such notice, or where there was previous injury to person or property as a result of the existence of the defective, unsafe, dangerous or obstructed condition,.....

NYC Sidewalks, Tree Wells

- “Tree wells are, rather, ‘encumbrances’ or ‘attachments’ to a sidewalk” and are the responsibility of the City to maintain in a reasonably safe manner. *Ramos v. City of New York*, 2015 N.Y. Slip Op 30378 (U). (Sup. Ct. Bronx Co., 2015).



THE END

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