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Self Help Nuisance Abatement in Baltimore City

In post-industrial shrinking cities like Baltimore City in Maryland, privately-owned abandoned and vacant land is plentiful. Communities are seeking legal tools to gain access to this abandoned land in order to use it for community purposes. Community Law Center has developed such a tool in self help nuisance abatement, which creates a process for community members harmed by nuisance properties to turn them into community assets. However, the tool requires that neighbors take specific, often nuanced, steps and is therefore difficult to use correctly without legal guidance. A Baltimore community garden case study highlights common missteps, and the paper provides suggestions for community groups from other states who seek to borrow this tool.

Keywords

Nuisance, vacant lot, land tenure

INTRODUCTION

This paper highlights a creative application of a legal tool called self-help nuisance abatement, which has the potential to increase community access to vacant, privately owned land. The example of Homestead Harvest Community Garden illustrates the challenges and opportunities facing communities who wish to use this legal tool.

Community Law Center (CLC) is a legal services organization in Maryland which seeks to strengthen neighborhoods by advising and representing community-based nonprofit organizations. Baltimore City consists of over two hundred neighborhoods, most of which are represented by at least one community organization. Some community organizations are large and well-funded, with full-time paid staff members, but most are informal and volunteer-run. Many cities have community associations only in certain planned developments or in influential neighborhoods; in Baltimore, community associations exist in almost all areas of the city and are often very active and organized, even in the most highly distressed communities.

CLC represents these small groups, helping them advocate for their neighborhood. Staff attorneys strengthen the organizational structure of groups by revising bylaws and articles of incorporation, revival, and amendment. CLC attorneys also work with community groups to prioritize and actualize their goals.

TURNING VACANT ACRES INTO COMMUNITY RESOURCES: PROTECTING COMMUNITY ACCESS TO LAND

Baltimore City is a shrinking city; from its peak population in 1950 at nearly one million inhabitants,¹ the city has declined by over one-third to 622,104 residents in 2013.² This stark decrease in population has created many social ills for those who remain, but the most visible change has been in the significant increase in vacant land. CLC has been working with community groups to address vacant land issues since the organization's founding in 1986.

For an attorney, the first step when considering a legal issue relating to any real property is to look up its ownership history. It is important to understand the ownership of a parcel, because setting foot on land belonging to another, without permission from the owner, is trespass, which could expose an organization or individual to civil or even criminal liability.

Baltimore City itself owns many of the vacant properties within its boundaries. If Baltimore City owns a vacant lot, a community or individual can usually enter into a license agreement with the City to use the land under its Adopt-A-Lot program.³ The City's license program is very user-friendly but provides almost no legal protection for gardeners if the City finds a willing buyer for the property. As Baltimore's real estate market improves, the City may

¹ U.S. Census Bureau. "Table 18. Population of the 100 Largest Urban Places: 1950," <http://www.census.gov/population/www/documentation/twps0027/tab18.txt> (accessed February 11, 2015).

² U.S. Census Bureau, "Baltimore city Quickfacts," <http://quickfacts.census.gov/qfd/states/24/24510.html> (accessed February 11, 2015).

³ Information about Baltimore City's Adopt-A-Lot program can be found at http://www.baltimorehousing.org/vtov_adopt.

begin selling gardens, though it has not yet been a significant concern for most gardeners since the City began promoting the license program in 2011.

If a private entity owns the lot, whether a corporate entity or an individual person(s), the legal situation for prospective gardeners is more difficult to solve. Because entering onto the property of another without permission is a trespass, many community groups try to obtain permission to use the property from its owner. If the owner agrees, he may enter into a lease or license agreement with the neighbors which would allow them to use his land under certain circumstances. But what if the owner of the property is a corporation dissolved by the state for failure to pay taxes? What if the owner of a property is deceased? How should the community locate and contact his heirs? What if the owner of the property has not been seen in Baltimore for thirty years and no one knows what has become of him?

Even if a listed property owner is unreachable or deceased, entry onto his land without permission is still an illegal trespass. Some community members are comfortable with taking the risk of breaking the law in order to take action to clean up their community. Others are concerned about exposing themselves to liability in trespassing on any property, even property that has been abandoned.

To deal with such issues, CLC in the late 1980s and early 1990s decided to use the legal concept of nuisance to forge a new tool for communities who want to clean up and use vacant privately owned land for community purposes.

When a property owner maintains (or fails to maintain) his land in such a way that it interferes with his neighbors' rights to the quiet enjoyment of their own property, he has created a nuisance. Common examples of nuisance include the production of excessive dust, light, vibrations, and/or noise. An affected neighbor has the right, after giving notice to the owner, to abate the nuisance, if necessary, in order to stop the harm to his own property. CLC's idea was to use the tool to not only abate a nuisance but to take it a step further, to use the land for community purposes.

HOMESTEAD HARVEST COMMUNITY GARDEN

In 2004, residents in the neighborhood of Better Waverly in Baltimore, Maryland created a cooperatively run garden called Homestead Harvest in a vacant lot in the community. The lot had formerly contained a derelict single-family house, which the city condemned and demolished in 2002. In the two years that followed, the property became a haven for drug use and distribution, dumping, and other dangers. The neighbors discovered that the property was owned by a limited liability corporation (LLC) with a forfeited charter. Guided by CLC-produced handouts and materials on self-help nuisance abatement, the neighbors sent a letter describing their intentions to build their garden to the listed address for the defunct LLC as well as to the address of its resident agent. The community members continued with their plans of planting a garden. Over a decade later, the garden is thriving and has created a diverse network of relationships among the gardeners that has strengthened the neighborhood. Today, the property's ownership has transferred to Baltimore City, and the gardeners have entered into a license agreement with the City to remain on the land.

The main challenge and barrier in using the legal tool of self-help nuisance abatement is making sure that community groups actually complete all of its requirements. There are three legal requirements that communities must meet before the legal benefit of abatement may apply: (1) that a lot be an actual nuisance, (2) that notice of the nuisance conditions be sent to the owner, and (3) that the abatement of the nuisance be reasonable.

Actual Nuisance

The first requirement is that the property must be an actual nuisance, as defined under the law, before a neighbor may abate. Nuisance may be described slightly differently in each state, but Maryland caselaw states that nuisance includes “injury, damage, hurt, inconvenience, annoyance or discomfort to one in the legitimate enjoyment of his reasonable rights of property, or which renders ordinary use and occupation of his property uncomfortable to him.”⁴ If a vacant lot is well-kept and following all city codes regarding trash and vermin, neighbors may not use nuisance abatement as a tool to legally enter a property, since there is no nuisance to abate. Also, an abater must be able to show that their own property interest has been damaged in some way. If the abater comes in from another neighborhood to care for a vacant lot, she may have a difficult time showing that she has been harmed by the nuisance conditions and therefore deserves to use the tool. In the Homestead Harvest case, the drug activity, dumping and other illegal acts taking place on this lot were harming the quiet enjoyment of nearby neighbors. If the owner of the property had returned and challenged the gardeners, they would have been able to prove that the owner had created a genuine nuisance in his neglect of basic property maintenance.

Notice

The law requires, except in cases of emergency, that a prospective self-help nuisance abater send notice of the nuisance conditions to the property owner. The owner must have a reasonable chance to abate the nuisance on his own property first, before his neighbors take the project upon themselves. The legal requirement of adequate notice to the owner is where many community groups fall short when they attempt to use self-help nuisance abatement without the benefit of legal advice. The approach taken by the Homestead Harvest gardeners, written without an attorney’s help, provides a few examples of common mistakes community groups make when writing such notice letters.

Problem #1 – Lack of Specificity

Using the term “nuisance” is not sufficient. A self-help nuisance abatement letter must be specific regarding the exact violations of the law. It should contain citations to dates and times of violations of specific provisions of the housing code. If the notice is not specific enough, the owner cannot be reasonably expected to abate the nuisance. There were no citations to the housing code in the letter from Homestead Harvest.

⁴ Herilla v. Mayor of Baltimore, 378 A.2d 162, 168 (Md. Ct. Spec. App. 1977).

Problem #2 – Lack of Deadline

As noted above, neighbors must give the owner the chance to abate the nuisance. Therefore, the community should set a reasonable deadline by which the owner should comply, after which they will abate the nuisance themselves. The Homestead Harvest gardeners told the owner of the property that they would like to begin their project on a certain date, but they did not present this date as a deadline by which the owner must clean up his property.

Problem #3 – Asking for Permission

Many community groups start out their interaction with a vacant lot owner by asking him if they can use his property for their project. This is a conscientious way to begin the process, if the group believes that an owner exists and is willing to talk to the community. However, a request for permission to use a piece of property is not sufficient notice to an owner that the group plans to abate a nuisance. The right to exclude is an essential element of property ownership in the United States. Therefore, when someone writes a letter to a property owner asking for permission to use his property, if the owner does not respond, he has essentially answered the question in the negative. Self-help nuisance abatement, on the other hand, is not a request; it is a demand that the owner live up to his obligations. Rather than demand compliance with the law, the Homestead Harvest gardeners asked for permission to use the space, to which the owner of the property did not respond.

In the Homestead Harvest case, the letter was not specific regarding the violations of law, it did not provide a deadline by which the owner must abate, and the letter asked for permission to use the lot. Because the letter was not sufficient notice of nuisance to the property owner, the neighbors were not engaged in self-help nuisance abatement when they began to clean, green and cultivate the lot. Rather, they were trespassing and could have been exposed to liability if the owner had chosen to come back to the lot and enforce his rights.

Reasonableness

The final requirement for self-help nuisance abatement is that the abatement must be a reasonable act. Whether an abatement of a nuisance is reasonable or not would be decided by a court if a property owner decided to return and sue for reimbursement for damage to his property. A court might not consider an urban farm, for example, to be reasonable self-help nuisance abatement, especially if the farmers are earning money from the enterprise by selling produce. On the other side of the continuum of reasonableness, a judge almost certainly would consider mowing grass and picking up accumulating garbage to be a reasonable abatement of a vacant lot. However, any strategy in between a simple clean and green project and an urban farm is an exercise in line-drawing. Once a neighbor cleans up a lot, the property is no longer a nuisance, so a court could hold that the further step of creating a garden on a lot is an unreasonable stretching of this remedy. Because owners have truly abandoned so much of the land in Baltimore for so long, the self-help nuisance abatement remedy has never been tested in court; to date, no owner has returned to his property and sued community gardeners found there for damages.

CONCLUSION

Community members are often eager to get started on their projects and chafe at the sight of acres of privately owned land in their neighborhoods lying fallow and causing problems. However, there may come a time when a property owner returns and seeks reimbursement for damage that the owner considers to have been done to his property. When that time comes, a community-based organization that has used the self-help nuisance abatement tool under the advice and representation of an attorney, with clear documentation of previous nuisance conditions, will be in a much stronger legal position than an organization that has been trespassing.

Community attorneys like the attorneys at CLC face the difficult task of convincing communities that legal assistance is useful at the beginning of land tenure projects such as starting community gardens. Legal advice and representation in drawing up documents, like self-help nuisance abatement letters, can mean the difference between a project that lasts and a serious liability. Our task is to convince organizations to ask us for help, to assure them that we do not intend to stand in their way or to slow them down from building their project, but rather to help them build a solid legal foundation for their future work.

About the author: Becky Lundberg Witt is an attorney at Community Law Center in Baltimore, Maryland. She helps community-based organizations in Baltimore City accomplish their goals, from strengthening their internal organizational structure to representing neighborhoods in administrative hearings. She works with groups to lay a legal foundation for the hard work of transforming Baltimore's vacant and abandoned spaces into vibrant community assets. She earned her J.D. from Boston University School of Law.