



Wendy Lathrop is licensed as a Professional Land Surveyor in New Jersey, Pennsylvania, Delaware, and Maryland, and as a Professional Planner in New Jersey. She has been involved since 1974 in surveying projects ranging from construction to boundary to environmental land use disputes.

## Is it NIMBY?

I live in a 96-year-old house in one of the small communities surrounding Philadelphia. Most of these boroughs, towns, and villages took root between two and three hundred years ago, and so a significant amount of development, both residential and commercial, has evolved over that period of time. There is also a fair amount of open space that has been preserved, without resorting to Philadelphia's Fairmount Park System and its 9200 acres in 77 primary parks. The fate of one particular local tract of land is now in litigation, not primarily to preserve the 40 acres of the Reserve at Maybrook on the Merriam Tract, but because of the impact the tract's development will have on a neighboring municipality.

A little background is called for at this point. The Borough of Narberth is a primarily residential community of about 4220, covering about half a square mile and completely surrounded by the Township of Lower Merion, population 59,500 and about 23.3 square miles in area. Narberth has a train station, a main street with interesting little shops, a park, and no vacant lots. Lower Merion, in comparison, is a mixed-use Goliath with land to spare to developers, although its conservancy organization tries hard to preserve both open space and historic structures.

The tract in question lies entirely within the boundaries of Lower Merion Township, but adjoins North Wynnewood Avenue. Here is the source of the dispute. We generally think of abutting parcels as running to the center of the street unless there are reasons to believe otherwise. In this instance, the "otherwise" is that North Wynnewood Avenue

is completely within Narberth, so that the developer of Maybrook must seek permission to open a driveway that would allow residents of the proposed 253 apartment units to enter and depart their homes by way of Narberth's streets. Narberth says "no." What's a poor developer to do? Negotiations, using that term loosely, have been going on since 2001. Failing that, litigation is the recourse. Narberth is too small to have much of a coffer for defense expenses. So perhaps the answer lies in some kind of other forced agreement.

*Version One:* Suppose that the sideline of North Wynnewood Avenue were not the corporate limit line between Narberth and Lower Merion. In such a case, we would likely assume that the rights to the street ran to the centerline of the road. In the instance that North Wynnewood Avenue might be a one-way street, then all traffic exiting from the new development would be traveling in the same direction of all other vehicles, and would not need to cross the centerline for the purpose of departing. Similarly, anyone wishing to enter the new complex would

**"...never assume that a parcel has access to a road just because it borders the street."**

Enter the concept of impact fees. Many developers grind their teeth over being forced to pay for the right of their future purchasers to use the roads, schools, sewers, and other facilities that the layperson takes for granted. And arguments abound regarding whether or not a developer should have to donate a strip of land along an existing road for future widening of the right-of-way. In this instance, an offering of dollars in exchange for the right to access a road is a relatively small price for the developer, but may prove to be a major concession by the Borough of Narberth.

Let's imagine a few hypothetical scenarios, just to see what questions might arise about legality and equity.

also have the opportunity to use only the Lower Merion side of the street, as if there were a fence down the middle (as my former neighbor once attempted to do to the commonly shared driveway between our houses). Aside from planning ahead to be on the proper side of the road before turning into the complex, could there be a dispute over use of road? What is the increased burden on the use of the Narberth side of North Wynnewood Avenue?

*Version Two:* Suppose again that the centerline of North Wynnewood Avenue is the dividing line between the two battling municipalities, but that it is a two-way street. Would that mean that in order not to burden Narberth, only

those drivers traveling on the same side of the street as the development should be permitted to use that road? Would anyone departing the complex need to turn only in one direction to stay on the Lower Merion side of the street in order not to burden Narberth? If no such directional restrictions were placed on those wanting to enter or exit the complex, how much increased use would there be on Narberth's side of the street?

**Version Three:** Suppose that North Wynnewood Avenue is a private road, completely on the Narberth side of the municipal dividing line (it is not-keep in mind these are hypothetical situations). The Reserve at Maywood would have no right to use it. And because Maywood in fact does have access to a public road in Lower Merion, its future residents are not denied access to their property. Perhaps the access is not as convenient as direct ingress and egress over North Wynnewood Avenue, but the complex is not landlocked. The present access is not, in fact, direct. It will require a new two-way private street extending from an existing public Lower Merion road through the property and tying into an existing parking lot of other apartments on the overall Merriam Tract of which the Reserve at Maybrook is a part.

It is an argument similar to Hypothetical Version Three that Narberth argues. The future residents already have a means of access, so the developer's insistence on entering the Borough with an additional driveway seems unwarranted.

But aren't public roads open to all the public, to use at will, no matter the origin of the travel? That is part of the "legal" side of the developer's argument. The present offer from the developer to Narberth is a one-time payment of \$685,000. Meanwhile, Narberth stakeholders have been laying out their concerns, among them traffic congestion, increased stormwater runoff, the impact on the neighborhood's quality of life, the preservation of the Merriam estate's historic buildings, and loss of natural habitat. Even if only one vehicle per unit were to use the streets of Narberth, traffic would increase 6%; is the proposed settlement enough to maintain that increased wear and tear for more than a few years, aside from other impacts? That is the "equity" side of the argument.

Meanwhile, never assume that a parcel has access to a road just because it borders the street. *A*

*Built to last...*

## The 5199-Series <sup>metal</sup> Ball & Socket Pole Brackets

**NO PLASTIC!**

The bracket and cradle are integrated into one unit with the SECO 5199-Series. The link between the ball & socket sleeve allows for an almost unlimited range of movement on the pole or ATV.



And, don't forget, all SECO brackets and cradles are metal, not plastic!

**SECO**  
*Often copied,  
never equaled!*

see your local SECO dealer today  
see us online at: [www.surveying.com](http://www.surveying.com)



**DML2000**

**The DML2000 Magnetic Locator**  
— Designed to last a lifetime

- All New Controls:
  - 6 Position Sensitivity Switch
  - Combined On/Off—Volume Satisfaction Guaranteed or your Money Back
- All Weather Operation (-20 to 120°F) works great in Rain, Sleet or Snow
- Waterproof Sensors—36"
- **LIFETIME WARRANTY**

Dunham & Morrow Inc.  
22611 Markey Court, Suite 114  
Dulles, VA 20166  
(703-444-0909)

[www.magneticlocator.com](http://www.magneticlocator.com)