

A THOUSAND CUTS:

POACHERS, ENCROACHERS, AND SQUATTERS

*In a battle of public versus private,
some landowners insist
on pushing the boundaries.*

By Francesca Lyman

In the sketch, it was going to be an oasis of peace, an undulating landscape of waterfalls and ponds above Lake Washington Boulevard, part of Seattle's historic chain of Olmsted parks. The owner of the Seattle home bearing this very fortunate address, with spectacular views of Mount Rainier, had pumped thousands of dollars into the landscape fronting his house, to build a stylish, contemporary water garden.

That was before he found himself stepping on some powerful green toes. As fate would have it, this boulevard-dweller's water garden, complete with elaborate pumps and re-circulating fountains, actually occupied a chunk of the Olmsted brothers' famous 1903 "Emerald Necklace." His garden had sprouted a row of palm trees and yucca plants, too.

One thing the Olmsted brothers didn't have in mind for their park was a necklace of palm trees. Plus, according to Seattle Parks and Recreation, this resident's new front yard sat on land where it didn't belong.

He might have checked the pedigree

of his property: Lake Washington Boulevard, designed by John Charles Olmsted, Frederick Law Olmsted's stepson, almost exactly 100 years before, ran 45 feet up the yard, winding past the lake and curving over Frink Park. The dense ravine holds one of the only natural, stream-fed waterfalls in a major city, surrounded by glorious old-growth cedar trees. But the homeowner's waterfall—the palm tree Shangri-la—would have to go.

"This [landscaping project] was so far over the line that it was easy to go after," says Donald Harris, manager of Seattle Parks and Recreation's real estate division. "And my colleagues would remind me, 'What if a kid fell into one of these waterfalls or ponds and drowned while on parks property?'"

Wealthy enclaves like this, near Madrona Park in Seattle, are not the only places where homeowners are making bits and pieces of public land part of their private domain. Across the country, cities face a constant battle with private homeowners encroaching on parks and public spaces. Wittingly or unwittingly, brazenly or stealthily,

but almost always illegally, these 21st-century squatters are slowly nibbling at the edges of the commons.

- In Great Falls, Va., a couple decided to build a \$30,000 tree house for their daughter on a conservation easement bordering a national park. After the county park authority told them to remove it, they went to court and lost.

- In nearby Chantilly, Va., a family carved out a half-acre lawn from county park land, while their neighbors built swimming pools, hot tubs, decks, and gardens on park land as well, according to an article in the *Washington Post* detailing such incursions.

In Washington, D.C., Seattle, and elsewhere, city and county park officials are reporting thousands of cases of suburban homeowners, as well as citizens in rural areas, encroaching on park land. These property battles are breeding growing animosity in quiet neighborhood hamlets between communities and parks, but are also spurring discussions among managers about how to better relate to neighbors and wrest back lands poached from parks.

The legal term for this is encroach-

ENCROACHMENT OFTEN TOUCHES ON SIGNIFICANT ENVIRONMENTAL ISSUES, EVERYTHING FROM CLEARING IMPORTANT TREES TO DUMPING GARBAGE.



SEATTLE PARKS AND RECREATION

ment, says Michael Rierson, special projects administrator in the resource management division of the Fairfax County (Va.) Park Authority. "That's sort of a euphemism for trespassing, and it's as illegal as trespassing on your neighbors' property."

True, many states allow people to claim ownership of private property not theirs as long as they can prove they've been using and maintaining it over time—so-called adverse possession. But, says Rierson, "squatters' rights" never apply to parks or to land owned by the public.

"Nevertheless, people think this is the Wild West," says Rierson. "If you've occupied the land for 10 years, you have a right to own it."

Albert Einstein famously said, "Not everything that can be counted counts, and not everything that counts can be counted." There are no national studies quantifying the extent to which private landowners are encroaching on parks and public property, but a survey of a few cities by *Parks & Recreation* magazine reveals that park managers face universal challenges in confronting

encroachers and enforcing the law.

One universal problem is the strange, though pervasive, sense of entitlement that American homeowners seem to hold—that building on public lands doesn't "count."

"People think if it's a park in their back yard, they have a right to use it," says Montgomery County (Md.) Department of Parks' Mitra Pedoeem.

That makes it hard for neighbors to spot—and for public officials to enforce. In a Seattle waterfront neighborhood, for example, homeowners decided to block off a street to create a garden and parking area for their cars, acting as though it was their land by blocking people from walking on the street toward the beach.

"They actually claimed [that] the people using the street were the ones encroaching," laughs Patti Quirk, manager of Shoreline Street Ends for the Seattle Department of Transportation.

Some cities, counties, and municipalities have laws specifically protecting their park land against private encroachers. But many don't, says Virginia lawyer and *P&R* magazine columnist

Dr. James C. Kozlowski, adding that common law generally protects against encroachment on public lands.

Sometimes they're small violations, and easily stopped. In eastern Virginia, a condo owner finds lumber, nails, and logs in the woods behind his home, and reports a fort being erected by local kids. "It could have been dangerous," says Dallas Blackiston, of Springfield, Va., "and I was not too comfortable knowing that kids could be climbing up there out of view of grownups." The woods, on an incline, had a history of being inundated and of fallen trees.

The problem was resolved within a week. Illegal forts, tree houses, sheds, and fences are regularly routed.

Though vigilant, not all citizens are so public-spirited. "It's neighbors getting mad at each other, and tipping us off," says Pedoeem.

"Homeowners, once they realize they've built on park land, will often do a mea culpa and promise, 'I won't do it again,' while promising to restore the land," says Fairfax County's Rierson.

But there's another 10 percent to 20 percent who, when caught, become belligerent, says Rierson. "They'll say, 'Sue me,' and make any number of arguments, like that the parks employee was abusive, or that they were being singled out." As a result, he says, Fairfax County now sends two people to the door, instead of one.

While disputes over park boundaries may seem petty to private landowners, park officials see things differently. "It's pretty serious, in my opinion," says Montgomery County's Pedoeem, who cites Prince George's County in Maryland, and other neighboring counties as equally plagued. "I know this is a problem everywhere."

Encroachment often touches on significant environmental issues, everything from clearing important trees to dumping garbage. "People have no right to do the things they do, clearing dozens of trees, or dumping old cars and mattresses," she says. "This happens all the time."

Many violators feign ignorance of the

boundary lines, she says, or play dumb. It's not uncommon, in Washington, D.C., to find people "claiming they can't speak English," she says. Such was the case of a man who diverted an entire stream. "We found a man siphoning off stream water for his swimming pool and then creating his own private beach."

Superintendent of Seattle Parks and Recreation Tim Gallagher, who once worked in Los Angeles County, recalls a guesthouse built on park land in the Hollywood Hills, behind Ford Theater and the Hollywood Bowl. "The house was built on park property," says Gallagher, adding that the department took possession of the house, sold it, and used the proceeds for other parks.

Seattle's Harris says that, with more than 1,000 encroachment cases on the books, combating park "freeloaders" is a daily duty.

"It's no exaggeration to say that at least once a day, something comes up

having to do with private encroachments," says Harris. With 400 parks and open areas, and more than 6,200 acres of park land to supervise, however, the department has little resources to devote to these problems, he adds.

Harris suspects that park managers in cities with Olmsted linear parks and parkways are particularly embattled, because these parks line the edges of the parkways and run up to the back yards of big houses. Dozens of cities have parks designed by Olmsted and his successors, who also designed some 355 schools and college campuses between 1857 and 1950.

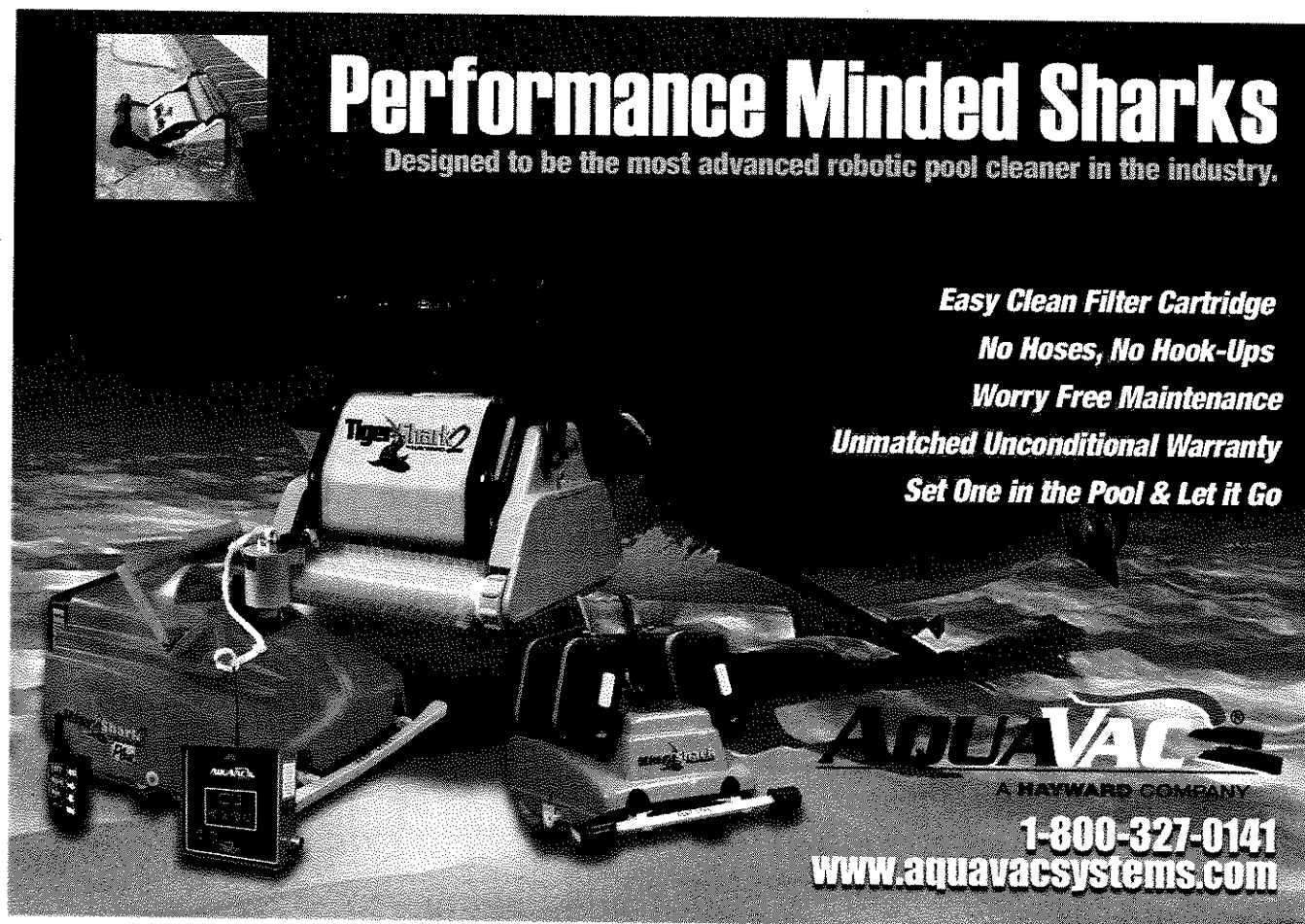
"These are usually prestigious addresses, and the people who own these houses have the money to spend on extravagant renovations, porte-cochères, and circular drives," says Harris.

In Seattle, the issue of private landowners encroaching on parks became highly visible when billionaire Starbucks chief Howard Schultz began ex-

panding the driveway approaching his estate bordering Viretta Park. (Another park recommended for inclusion in the Olmsted parks system, it has become a landmark in association with the late grunge rocker Kurt Cobain, whose fans leave flowers and other offerings on nearby park benches).

Schultz, who had already, as writer Robert Ferrigno wrote in the online magazine *Slate*, "erected a Citizen Kane autograph-model gate," further madened neighborhood residents by encroaching on park land with retaining walls and a widened driveway, which they thought was designed to make the entrance to his estate look grander.

Friends of Viretta Park sued Schultz and the city, accusing city attorneys of working for Schultz rather than defending the public's interests in arguing that the coffee magnate had an "access right." Ultimately the courts sided with residents, as Ferrigno noted—"The Old Seattle types who sued him."



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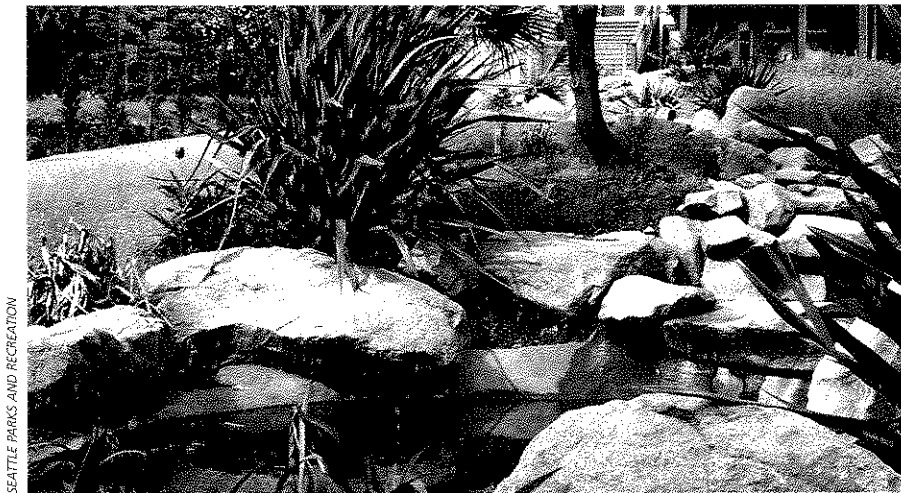
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MOST PARK AND RECREATION AGENCIES SAY THEY DON'T HAVE THE RESOURCES TO PURSUE ENCROACHMENT CASES.



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In the wake of this notorious case, the city's park department began cracking down on encroachers, instituting its own ordinance spelling out how it would enforce "non-park uses on park

property," and encouraging residents to check their boundary lines before building.

With strict local laws, it's much harder for private homeowners to suc-

cessfully win these property disputes. When the Seattle resident building on the Olmsted park complained about being asked to remove his landscaping, he claimed that just removing his water garden would cost him \$30,000-\$40,000. But he lost the fight with the city, and had to restore the embankment to simple grasses, under threat of further fines.

In cases of boundary disputes, parks and county and state agencies have access to a powerful arsenal of technological weaponry, such as satellite GIS systems and aerial photography, in proving what surveyors refer to as "lines of occupation."

"We can turn on the boundary layers," says Rierson, "comparing aerial photos from one year to another. We call it ground-truthing."

This way, the Fairfax County Park Authority was able to prove that the owner of a swimming pool company had indeed built a swimming pool on

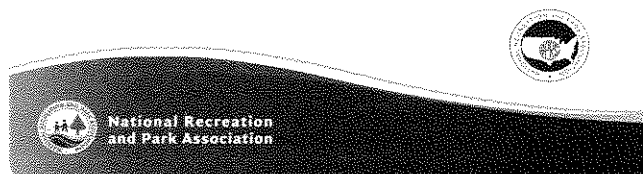


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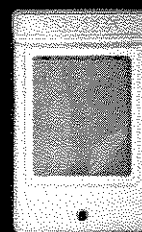
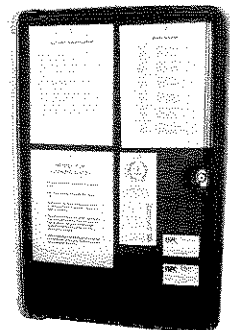
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what was once natural forestland, proving that the land had been changed. "We went to older aerials from 1998 to prove it," says Rierson. "Something strange appeared; it was totally wooded."

Despite such advantages, most park and recreation agencies say they don't have the resources to pursue encroachment cases.

"We rely on voluntary cooperation," says Seattle's Harris. "We don't have the staff or the time to fight this."

One of the biggest problems is that a wealthy landowner will pressure local politicians to make exceptions in his case. "They try to twist our hands by going to their advocates," says Harris.

But even the well-connected don't always win. Take the case of Seattle's Judge Jerome Farris, of the 9th U.S. Circuit Court of Appeals, who paid a total of \$618,000, the cost of a fine plus interest, in a settlement for a conviction against him for having his gardener take

down some 120 old-growth cherry and maple trees. He had the trees cut down to improve his view of the lake.

Unfortunately, private landowners oftentimes test the limits of the law because they know park agencies' resources are strapped and that it will be some time before violations are enforced—if at all. This can pit neighbors against the encroachers themselves.

In the ultra-rich hamlet of Laurelhurst, near Seattle's University of Washington, two families living on either side of a beach owned by the state Department of Natural Resources gradually edged out a large swath of expensive lake frontage, privatizing it with tall hedges and an extensive dock. Neighbors want it turned back into a public beach and boat launch.

"Yes, we all eventually want to turn it into a public asset," responds Jeannie Hale, president of a local community club working with the DNR. "But those violations have been there for 60 years.

Until we remove the weeds and make it less of an eyesore, we won't give those neighbors any incentives. When we have a beautiful grassy area, they will be more likely to remove [their hedges]."

It just so happens that one of the property owners is the sister of a powerful university donor whom everyone fears alienating. While neighbors hope for action from public agencies, they take heart from the presence of nearby Belvoir Place Park, made up entirely of encroached land.

Here, residents had once built decks, terraces, paths, and gardens, squeezing out public access. But today, a lush carpet of green descends down to the Puget Sound, at a graceful, swooping angle, as though designed for a wedding party to see the bride and groom off on their own private gondola.

It's a public park, but it feels more like a secret garden. And unless it's encroached upon again, it will be there forever. *P&R*

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