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COMMENTARY

## Good Neighbor Agreements: Navigating Post-Surfside Construction Safety in S. Fla.'s New Golden Age

How can an association or developer protect its rights against difficult, meddlesome or all-out dangerous neighbors? The answer is simple, "good neighbor agreements." A good neighbor agreement is a contractual agreement between neighbors, which can be used to outline protocols, policies, and mutual rules of respect and safety between the parties.

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By Alexander G. Leon | January 08, 2024 at 09:15 AM



Whether you grew up watching "Bewitched," "Seinfeld," or even "SpongeBob SquarePants," you are no doubt familiar with the American television trope of the obtrusive neighbor. Gladys Kravitz, Cosmo Kramer and Squidward Tentacles are just a few of the famous neighbors throughout television history who have irked, annoyed and spied on the protagonists.

In South Florida, we have placed our own sub-tropical, quirky twist on the famous American stereotype of neighborly relations and the dreaded debate over the height of one's hedges. Here, you might see signs chastising mango and avocado thieves, or you might find yourself embroiled in a debate as to whether your neighbor should or should not be saving and storing frozen iguanas on their property during the winter. In any event, South Florida life continues to pose questions that are only ever seen in, let's face it, South Florida.

As our community embraces the influx of workers, capital, and jobs that have flowed into our economy post-pandemic, we are also bracing for the strains this has placed on housing, infrastructure and local governance. With new money, came new development, and lots of it. However, our cities have taken a strong and resolute stance that we must advance the goals of new development and expansion, while also preserving the safety and welfare of our existing residents. This is particularly important given the tragedy in Surfside and the concerns that some of the structural instability at Champlain Towers at least partially resulted from or was exacerbated by the nearby presence of heavy construction.

We have been flooded with requests from both developers and associations alike, seeking guidance on how to navigate the construction and development process post-Surfside. No longer is there merely a two-way street between the authority having jurisdiction (AHJ) and the developer. Now, the interests of the developer, the AHJ, private interest groups, and neighbors are all factors guiding the movement of the development process.

So, how can an association or developer protect its rights against difficult, meddlesome or all-out dangerous neighbors? The answer is simple, "good neighbor agreements." A good neighbor agreement is a contractual agreement between neighbors, which can be used to outline protocols, policies, and mutual rules of respect and safety between the parties.

With regard to construction, good neighbor agreements are critical both for developers and their neighbors. Developers want to complete their projects quickly, safely and efficiently. Neighbors want the projects completed safely and with minimal interference to their lifestyles. Although these interests do not need to conflict with one another, they often do. When these conflicts are not proactively resolved, what usually results is an expensive, litigious and unsatisfactory outcome for all parties involved.

To avoid these issues, our firm recommends directly engaging your attorney to facilitate conversations with the other side as soon as possible. The goal is to create a framework for the proposed construction, that complies with the city's requirements, the developer's timelines and specifications, and the existing residents' rights to safety, security, and sound sleep. Construction is always loud and noisy; however, early discussions allow both the developer and the existing residents to work out their concerns ahead of time, thereby avoiding angry neighbors and delays in construction.

Oftentimes, developers have tight deadlines they are required to meet to comply with their investment agreement. Unfortunately, the litigious nature of some neighborly, or rather unneighborly, relations can stall a project for weeks, months, and even years! By using a proactively drafted and negotiated good neighbor agreement, developers can obtain certainty with regard to their construction schedule and budget and create an ally in their neighbor instead of an adversary. Similarly, associations can advocate for certain safety protocols, notice requirements, debris mitigation techniques, etc., that protect the existing buildings, as well as their residents. All parties have a vested interest in seeking out a mutually agreeable set of safety and security protocols for major developments before tensions reach a boiling point.

So, what practices, procedures, and covenants are usually incorporated into construction-based good neighbor agreements? The three major categories our office focuses on in drafting such agreements are:

**Preventative Safety Measures:** This category is normally the broadest, most important, and time-consuming portion of any good neighbor agreement because it encompasses all identifiable safety protocols and measures for the project. These include items such as demolition procedures, dust and noise mitigation, falling debris prevention and remediation, ground disturbances/seismic activity, site security, site accident prevention, weather-related staging, and safety concerns. As most construction personnel know, job sites are fraught with potential hazards. To streamline the identification, analysis, and resolution of such hazards, our firm, together with professional engineering consultants, works with the latest standardized construction safety protocols and merges these with locally applicable procedures, city requirements, and the interests of the current residents to create a comprehensive plan for controlling on-site hazards and practices.

**Safety Violation Penalty Framework:** Rules aren't rules if there is no penalty for breaking them. Although associations and residents cannot levy fines and developers are unlikely to agree to financial penalties, there are ways to establish a sufficient framework for ensuring compliance with the agreed-upon protocols and procedures.

**Future Flexibility:** As noted above, the preventative safety measures sections dominate the bulk of any construction-based good neighbor agreement. However, it is impossible to account for every possible risk that could arise during the construction process. As the project evolves, oftentimes, methods, procedures, and actual schematic plans may change to account for unforeseen circumstances. In this same manner, the good neighbor agreement must be able to maintain flexibility and accommodate any new changes that arise from such unforeseen circumstances. Early conversations between the existing associations and developers, as well as maintaining open lines of communication throughout a

construction project, allow both sides to address these new and sometimes novel issues as they arise and provide parties with the tools necessary to resolve them amicably.

A good neighbor agreement cannot anticipate every possible change in what is often a multi-year development project, but it can provide a framework for dealing with such changes (including the possibility that work may need to be stopped to analyze any major revisions to the construction project(s) or major effects to existing buildings).

Ultimately, a good neighbor agreement benefits all parties involved. Whether you consider yourself the Seinfeld or the Kramer, the protagonist or the nuisance, a good neighbor agreement will assist you in protecting your interests; especially if you have the help of an experienced attorney in drafting and negotiating said agreement.

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