

**Oregon
Interpretive Ruling 93-88
ZERO LOT LINE—RESIDENTIAL CONSTRUCTION**

Requested By: PPPI MANUAL REVIEW COMMITTEE

QUESTION

1. Is the wall connecting a duplex type structure, where each side is privately owned, considered an exterior wall?
2. Why should the building code be concerned about fire walls? Shouldn't this issue be left to the civil courts to settle damages between adjoining property owners?
3. Wouldn't elimination of fire walls reduce the cost of housing? In this day of high housing costs, can we afford the luxury of this amount of protection?
4. Are there legal ways of not installing the fire walls required by the answer to Question (A)?
5. Are there alternates to the parapet walls required in Section 1709?
6. If a code-complying property line fire wall is installed as specified in answer (A), does the foundation also need to be separated?

BACKGROUND

Legal agreements between the property owners can be used to reduce the cost or even eliminate the need for the required fire walls.

The use of fire wall to separate one property from another was developed as a fire prevention strategy. After the large conflagration fires of the 19th century, the idea was to compartmentalize spaces to keep fires from spreading from one building to the next. We have had few conflagration fires in this century due to the success of this strategy. However, a recent example is a fire in a Houston, Texas, apartment complex which destroyed \$9 million in property and spread from building to building. No fire walls existed, and the roof covering was of a combustible wood shake.

The life, health and safety provisions of the code are the most heavily stressed reasons for the existence of a building code in Oregon. Statute also specifies other reasons for the code: security, welfare, access to the disabled, and conservation of scarce resources. Fire walls have their philosophical basis in security. Constitutionally we all have an expectation of being secure in our homes. Part of this security is the expectation that our neighbor's errors in the use of his land will not unusually risk our property. The neighbor has the same expectation of us. If construction is near the property line, both sides have an obligation to protect the other. The question is, how much risk and what degree of protection are necessary?

Under other Oregon laws, neighbors may elect to agree to assume part of the other's risk. Thus was conceived the use of party wall agreements and condominium law. The building code specifies the method of protection when no other "legal agreement" is specified. Such legal agreements come in varied forms, and the building official is not expected to be able to rule on their legality. We suggest visiting with the jurisdiction's legal counsel on such occasions.

FINDINGS

This interpretation is authorized by ORS 455.060, Rulings on Acceptability of Materials, Designs or Methods of Construction and Attorney General's Opinion OP-5208 issued October 1, 1981, which advised the statute permits authoritative interpretations of existing code requirements.

Existing Oregon law permits the use of common wall and condominium agreements. It is reasonable to permit legal protection and compliance with the permissible code requirements for overall building area, height, type construction and fire protection, as an equivalent alternate to property line fire wall protection.

DISCUSSION AND CONCLUSION

Q1: Is the wall connecting a duplex type structure, where each side is privately owned, considered an exterior wall?

A1: Yes; if the two properties are in different ownership, and no legal agreement exists so the building official can recognize the structure as one property, the code requires that the "common wall" of both units must be treated as if both buildings were built at different times, and two fire walls, one on each side of the property line, must be constructed.

By Section 105 an alternate method may be recognized where structures on both properties are built simultaneously. In this case a staggered stud two-hour wall is accepted. This action is taken since the practicality and cost of installing two one-hour walls is not deemed necessary when considering the probable risk of a fire starting inside the wall.

If, however, one of several legal remedies is exercised, the wall may be either eliminated (condominium law) or may be converted into a legal common wall.

Although first-cost effective, the common wall may be costly at the time one property owner elects to remove his portion of the building. The result is a possibly unusable wall encroaching onto property now desired for new development. Common walls have been discouraged for this reason but are not illegal under Oregon law, according to the Real Estate Division.

Q2: Why should the building code be concerned about fire walls? Shouldn't this issue be left to the civil courts to settle damages between adjoining property owners?

A2: Due to the fire and life safety concerns and the security concept developed in the background, it has been public policy for more than 100 years that building codes require fire breaks to slow or prevent the spread of fire from one property to another.

Three types of fire walls are used in the Oregon Structural Specialty Code: exterior (property line), area separation, and occupancy separation walls. Each is used to compartmentalize a building, the exterior wall being the most resistant to fire. The area separation is next in resistance. Although exterior wall protection may be reduced or eliminated by legal agreement, the other types of fire walls are still required.

Q3: Wouldn't elimination of fire walls reduce the cost of housing? In this day of high housing costs, can we afford the luxury of this amount of protection?

A3: Reduction of the first cost is an important goal but must be balanced with other public policies; i.e., safety, preservation of scarce resources, etc. This balancing is not a scientific event but must be done by human judgment. By nature, different people disagree on what is the proper balance. The solution has been to have people knowledgeable in the issues vote on the proper balance.

As in issues of energy conservation, the first cost is not the only cost to be considered. The life cycle cost is also important. It is false economy if the building's safety systems are omitted and the building burns to the ground on the first day of use. The building code represents a carefully balanced system of compromises between public policy issues.

Q4: Are there legal ways of not installing the fire walls required by the answer to Question 1?

A4: The building code requires the exterior walls to be fire resistive based on distance to the property lines. If these property lines can be eliminated, then no exterior wall exists and no fire wall need be installed. Elimination of property lines can be accomplished by partnerships where owners of two properties go together to form one property covered by one deed. Apartments are under one deed. Condominiums are also one property per the building code because the ownership of the building is in common. The sale of space inside the building is to the tenant to the back of the dwelling unit's interior finish. This is sometimes referred to as "paint-to-paint ownership."

Legal agreements are also possible between property owners to change the nature of the fire wall. The building code assumes there is no agreement between adjacent property owners, that they are not willing to cooperate. If, however, the adjacent owners can cooperate, or the structures are built by the same build-

er on properties which will be in two different ownerships, then a common wall agreement may be legally established to have both properties recognized as one so no fire wall is required. In these cases, the sound wall required by Appendix Chapter 35 will likely still give a one-hour fire wall. A common wall agreement eliminates the ability to call the structure two separate buildings. The entire structure is considered a single building for determining area, height, type construction and fire protection.

Legal agreement should include legal description and responsibility for repair after destruction and maintenance.

Even more elaborate legal agreements can be set up to satisfy the safety needs while specifying the legal responsibilities. An example of such a system is the Charbonneau Development at Wilsonville.

Q5: Are there alternates to the parapet walls required in Section 1710?

A5: Section 1710 specifies four exceptions; each of these gives alternates to the requirements for parapets. Parapets are extensions of the fire walls through the roof to a height of 30 inches (may be required to be higher on sloped roofed buildings). The theory of parapets is that they prevent the spread of fire across the roof from one "compartment" to the next. Also, the wall is said to provide protection for the fireman from heat in fighting fire.

Q6: If a code-complying property line fire wall is installed as specified in Answer 1, does the foundation also need to be separated?

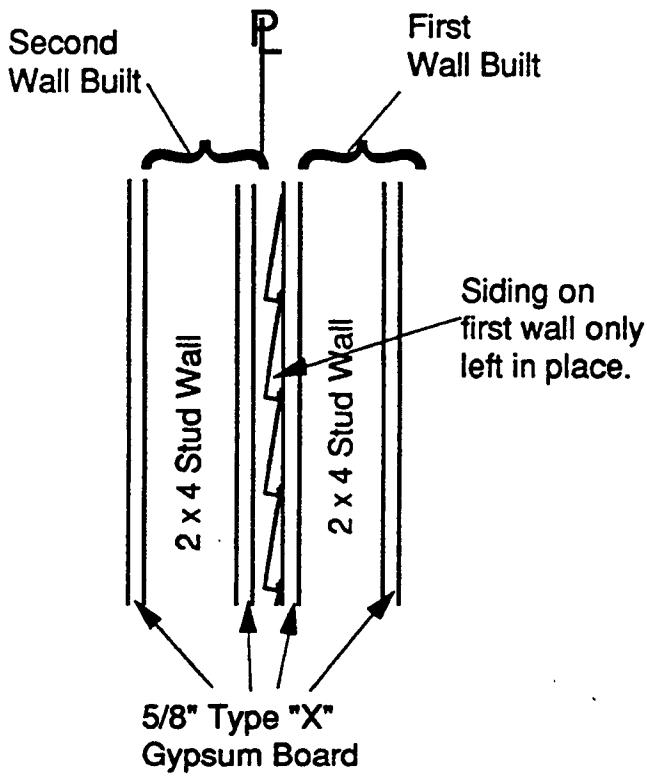
A6: Due to past legal conflicts over common walls, it is a good idea to provide for the division of the foundation so that buildings on either side of the property line can be demolished without endangering or encroaching onto the other property. Another alternative, the inverted "T" type foundation, becomes an "L" type if half is removed and thus is eccentrically loaded. However, division of the foundation is not required if the fire wall separation is eliminated by legal agreement.

See Table No. 1 for quick reference to above answers.

Interpretive Ruling 93-88 replaces PPPI-4062.

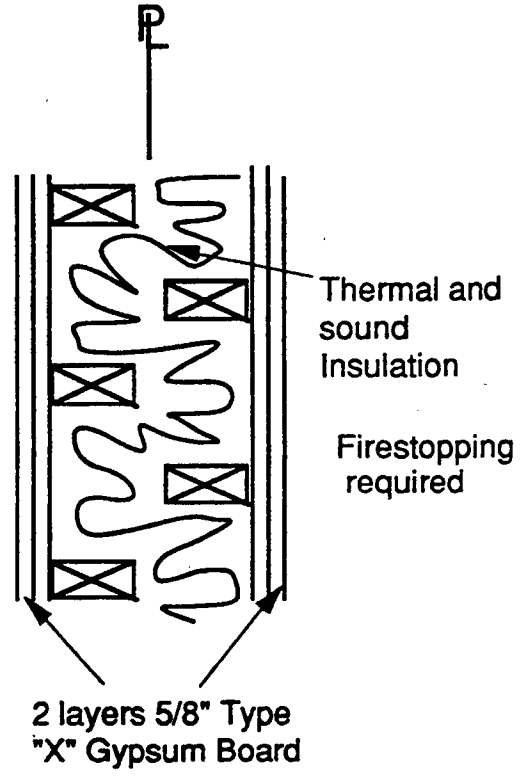
**TABLE NO. 1
RECAP OF THIS INTERPRETIVE RULING
EXTERIOR WALL FIRE PROTECTION**

CASE	OWNERSHIP	CONSTRUCTION TIMING	LEGAL AGREEMENTS	FIRE WALLS	NOTES
1 A	Separate	Different Times	None	Code Required	Example #1 below
1 B	Separate	Built Simultaneously	None	Approved Alternate See Answer (A)	Example #2 below
2	Separate	Built Simultaneously	Legal Agreement - Establishing Common Interest	Not Required	
3	Joint - Partners - Condo Law	Built Simultaneously	Legal Agreement or Condominium Law	Not Required	



No Scale

EXAMPLE NO. 1



No Scale

EXAMPLE NO. 2

(signed January 26, 1994)

John Talbott, Chairman
Structural Code Advisory Board

Date

The recommendations and findings of the Structural Code Advisory Board are accepted and the conclusions are adopted.

(signed January 26, 1994)

Gary J. Wicks, Administrator
Building Codes Agency

Date