Law and Community in Japan: The Role of Legal Rules in Suburban Neighborhoods

HASEGAWA Kiyoshi*

This article investigates how people utilize legal rules to conserve hospitable dwelling environments in suburban neighborhoods in Japan, through an examination of building agreements (kenchiku kyōtei), which are private contracts between landowners. The discussions in this paper are based on a database that includes interviews with residents and government officials, as well as responses to questionnaires administered to most of the boards of the homeowners associations in Yokohama City. My findings reveal that (a) Japanese residents often take legal rules into account when facing conflicts; (b) residents are often quite familiar with legal rules; (c) when residents discuss and settle disputes, neighborhood associations play important roles and (d) residents occasionally refer to and utilize not only legal rules but also nonlegal rules. My analysis suggests that legal rules are more ubiquitous than previously thought in Japan and that social structure has a decisive influence on the way they work.

1. Introduction: From Litigation Rates to Practices in Everyday Life

After World War II, Kawashima Takeyoshi, a leading legal sociologist in Japan, discussed legal consciousness among the Japanese. First, he pointed out that the Japanese preferred to avoid judicial procedures, which was one of the reasons why the rate of civil litigation in Japan had long been far lower than that in Western countries (Kawashima 1967). Secondly, he noted that, when the Japanese faced conflicts, they usually hesitated to resort to a lawsuit; rather, they tried to settle disputes through ‘the extrajudicial means of reconcilement and conciliation’ without utilizing objective criteria (Kawashima 1960: 5, 1963: 50).1

Some scholars have criticized his first remark (Haley 1978; Ramseyer 1992), while others have defended it (Rokumoto 1981, 2004; Wollschläger 1997). It is certainly important to ask why the civil

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1. Kawashima (1963: 45) pointed out, ‘Because of the resulting disorganization of traditional social groups, resort to litigation has been condemned as morally wrong, subversive, and rebellious’. In fact, even in the US, neither businessmen nor cattlemen utilized legal rules for resolving all their disputes (Macaulay 1963; Ellickson 2005). Moreover, since the 1970s, the United States has established alternative dispute resolution (ADR) procedures modeled on the mediation procedures in Japan (Foote 2006: 34). However, Kawashima also mentioned that, even in traditional society, when disputes arose outside of harmonious social groups or they lacked a harmonious relationship from the very beginning, lawsuits were often utilized (Kawashima 1963: 45–46).
litigation rates in Japan have been so low for so long. However, this question is extremely difficult to answer because various factors may affect the litigation rates, and these factors may also interact with one another.

What is more important is that Kawashima’s theory about legal consciousness intended to explain not only litigious acts but also the daily practices or behaviors of people out of court. He pointed out that while Western people sharply distinguished norms from facts and resolved their conflicts through legal rules, the Japanese were unaware of the legal rights or rules in their everyday lives and resolved their conflicts without regard to them. His aim was to enlighten and modernize such feudalistic ways of thinking of the Japanese, especially in the rural areas in those days. Although critics have focused exclusively on the relationship between legal consciousness and civil litigation rates, the low rates of litigation is just one illustrative example that Kawashima mentioned in his articles.

I find it more interesting and productive to explore the usual practices and behaviors of the Japanese in their everyday lives than to seek the reasons for the lower civil litigation rates in Japan. In this article, I would like to focus on Kawashima’s second remark, that when faced with disputes, the Japanese people attempted to achieve mediated settlements within their communities without utilizing objective criteria, that is, legal rules. Here again, I would like to emphasize the importance of the practices and behaviors of Japanese people in their everyday lives; the point is not whether or not they go to court, but whether or not they consider their problems from a legal point of view and utilize the legal rules within their communities.

According to Kawashima (1960: 5), before World War II, in Japan,

> even when those who were placed in the same social status disputed with each other, they were encouraged to settle their disputes not through an objective criterion but by a higher-ranking person, in a way to preserve their non-legal relations; in other words, it was necessary for disputants to give a higher-ranking person ‘carte blanche’ in their dispute resolution, ‘forgive and forget’ their disputes, namely, stop the dispute without making their rights clear. For that purpose, a higher-ranking person sometimes treated disputants and reconciled them by creating a family atmosphere, through Speisegemeinschaft [dining gathering].

This remark, however, was made about 50 years ago. Does it hold true even today? How do the Japanese settle their disputes out of court? Do they still depend on higher ranking persons instead of objective criteria?

The first objective of this paper is to discuss whether suburban residents in Japan utilize legal rules in everyday life. If Kawashima’s scenario were to hold true for modern-day Japanese, it follows that, even in the present day, residents will settle their disputes through compromises or negotiations, regardless of legal rules. Through research on the behavior of suburban residents, I explain that this scenario is highly unlikely.

The second objective of this paper is to understand how the legal system in Japan functions with regard to the conservation of hospitable dwelling environments. Residential districts in Japan are often chaotic and ugly because of inadequate zoning restrictions; however, in some areas, residents do attempt to improve their dwelling environments. This article investigates the efforts of these residents toward creating better districts.

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2. His theory seemed to have roots in the legal theories of Kant and Hegel. See Kawashima (1946).
3. Luhmann (2004: 169) also noted, ‘Japan, especially, is famous for its extensive use of extra-legal mechanisms for conflict resolution’.
From the 1980s onward, some legal sociologists in the US also paid attention to the practices and behaviors of people in their daily lives (Galanter 1980; Engel 1984; Harrington and Yngvesson 1990). More recently, West (2005) and Feldman (2006) focused on the role of law in everyday Japan. However, few studies in Japan have attempted to investigate in detail the manner in which disputes are resolved and law is enforced by the residents in a residential neighborhood.

Here I explore the role of legal rules in suburban daily life, through an examination of the building agreements (kenchiku kyōtei, hereafter BAs) in Yokohama City. Although BAs are not very popular in Japan, they are well suited for an analysis of dispute resolution and law enforcement in neighborhoods because they are utilized and enforced by landowners themselves.

This article summarizes and rewrites the first half of a book I wrote (Hasegawa 2005), based on a database that includes both exhaustive interviews with several government officials and residents as well as responses to questionnaires that were administered to most of the boards of the homeowners associations (HOAs) in Yokohama.4

2. The BAs

Before I discuss BAs, let me provide a brief explanation of the defects of the zoning restrictions in Japan. As mentioned previously, zoning restrictions in Japan, which are stipulated in both the City Planning Law (Toshi Keikaku hō, hereafter CPL) and the Building Standards Law (Kenchiku Kijun hō, hereafter BSL), are inadequate for conserving dwelling environments. First, the zoning restrictions are slack and lenient. Although there are 12 land-use zones, of which seven are residential areas, even in the most restricted residential zone (Category 1, Exclusively Low-Story Residential Zones) people build apartment blocks, dormitories, schools, libraries, temples, public bathhouses, clinics and so on.5 Second, zoning restrictions are not entirely exclusive but one sided. While developers are not allowed to build stores or industrial plants within residential zones, they are able to build residential dwellings even within some commercial or industrial zones. Third, the zoning restrictions have a top-down character. Municipal governments are unable to exercise their own discretion in determining the zoning restrictions. They are required to select the type of restrictions from a menu prescribed by the CPL and BSL. Fourth, opportunities for the residents to participate in determining the zoning restrictions are insufficient. According to the CPL, municipalities are not required to hold public hearings unless they consider it necessary [Article 16(1), see also 17-2]. In addition, the zoning plans are announced publicly for a period of only two weeks; hence, opponents with adverse opinions must submit reports during this period (Article 17). Fifth, while the municipalities, according to the BSL, have the power to issue building permits (Article 6) and correct buildings that violate the legal regulations including zoning restrictions (Article 9),6 they frequently allow the violations to remain uncorrected. This is perhaps because they lack manpower and feel pressured by the opposition of the landowners whose illegal buildings are in question and can be demolished. In addition, according to the Supreme Court,

4. The questionnaires were administered to 154 boards comprising those who had notified the city of their addresses. A total of 115 valid responses were received (the response rate was 74.7%).

5. For building restrictions within land-use zones, see the CPL (Article 8) and the BSL (Annexed Table 2).

6. To be more specific, the officials that issue building permits are ‘the building officials’ (Kenchiku Shuji), while those that rectify the buildings that violate legal regulations comprise ‘the Designated Administrative Agency’ (Tokutei Gyōseicho) [Article 2(35) and 4].
since the zoning decisions at the stage of public notice are not considered to be of a concrete nature ‘bearing against particular individuals’, they cannot be made ‘the subject of a complaint action’. Thus, landowners have found it difficult to file suits against the zoning decisions.

Why has such a zoning system been maintained? It is clear that, after World War II, land-collateral loans were the most commonly used financing method for both corporations and individuals and that strict zoning regulations to constrain land development were thought to reduce land values. In fact, especially since the late 1980s, the Japanese central and local governments have often relaxed land regulations to encourage businesses to develop their land, to enhance economic expansion and to secure increased tax revenue for governments. When some local governments tried to set their own land regulations, the central government often put pressure on them.

Therefore, the municipalities or residents who wished to preserve their dwelling environments have not only drawn on the zoning restrictions but also utilized other options such as BAs. BAs have also been regarded as compensating for the defects of the zoning restrictions.

Given the above, what constitutes a BA? The BSL includes certain requirements regarding the establishment and content of a BA. According to Article 69,

In cases where a city, town or village, with respect to a part of its area, deems it necessary for the purpose of promoting the utilization of buildings by effectively maintaining and improving the environment of a residential area or the convenience of a commercial area as well as for the purpose of improving the surrounding area, it may provide by ordinances that land owners and those who have superficies or leases ... may specify a certain area on the land concerned and make an agreement ... on criteria for the sites, location, construction, use, form, design or building equipment of buildings within the area.

A BA is created in one of the following two ways: (a) a representative of landowners who have arrived at an agreement by unanimous consent submits a BA to the municipalities to obtain validation (Article 70, commonly referred to as ‘voluntary consensus agreement’) or (b) a single landowner establishes and submits the agreement to the municipalities to obtain validation (Article 76-3, commonly known as the ‘one-landowner agreement’). In both cases, the municipalities will validate the BA if it ‘does not unreasonably restrict the utilization of the land or buildings which are the object thereof, and conforms to the purpose of Article 69’ (Article 73), after public hearings have been held by the heads of the city, town and village to request the views of the parties concerned (Article 72). To abolish the agreement, the landowners must take such a decision with the consent of the majority and submit an application for abolition to the municipalities (Article 76).

These BAs (a) restrict land use (e.g. residential use) and its subdivision; (b) limit structures in size (e.g. minimum lot sizes 1,776 sq ft), height (e.g. 33 ft), color (e.g. white walls), building lines and

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8. Back in 1968 when Yokohama City established Yokohama-shi Takushi Kaihatsu Yōdo [Yokohama City Guidelines for Housing Land Development] that required developers to reserve places for schools in their developments, an official of the central government hauled the official of the city over the coals and said, ‘When did Yokohama City gain independent statehood? It is inexcusable to enact its legislation without authority’ (Tamura 1989: 299).


10. Developers typically create BAs through the second method to add value to their residential area. In the US, most restrictive covenants seem to be created in such a manner (Nelson 2002: 310).
design; (c) run with the land; (d) have an expiry date (e.g. 10 years) and (e) set rules on remedial actions against violations.

With regard to the areas under the purview of BAs, landowners often organize HOAs [un’ei iinkai (literally translated, governing committee)]. HOAs can enforce restrictions in their BAs by themselves because the members of the HOAs are landowners as stipulated in Article 69, albeit HOAs themselves are not stipulated in the BSL. Most BAs or by-laws prescribe that only the board chairperson shall become a plaintiff in a lawsuit.

Although the municipalities, as noted above, have the power to issue building permits and rectify buildings that violate legal regulations, they possess no legal authority to reject building permits or correct those buildings that violate the BAs. It has been considered that public entities are unable to intervene in BAs since they are private contracts between landowners. Therefore, the municipalities can only induce the landowners to follow the BAs and negotiate with the surrounding residents by withholding action on their applications when they are submitted. However, these inducements [gyōsei shidō (administrative guidance)] are now regarded as illegal if there is a clear contrary indication of the will of the applicants. In such a case, the municipalities could be sued for damages by the applicants.

BAs in Japan, which were institutionalized in the BSL in 1947, resemble restrictive covenants in the US. First, neither are public land-use regulations, but private contracts between landowners. Second, in both cases, the landowners organize HOAs and enforce the restrictions themselves. Third, restrictive covenants like BAs, run with the land; in other words, they are not simply agreements between the original contracting parties, but pass on to current owners and leaseholders. (Figure 1 is a BA area in Yokohama where land use, height and colors are regulated by a BA. Figure 2 shows town homes in San Pedro, CA, where exterior alterations by owners are prohibited by the covenants, conditions and restrictions).

On the other hand, there also are many differences between the two. First, restrictive covenants could include various regulations such as parking, insect control, pets and tree or lawn trimming. However, what can be prescribed in BAs is restricted to regulations concerning land use and buildings by Article 69 of the BSL. Second, HOAs or civic clubs in the US often possess, maintain and operate common areas such as streets, parks, swimming pools, tennis courts and other recreation equipment, levying assessments for them. In the US, there are many gated communities for the wealthy and Common Interest

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11. For administrative guidance before the enactment of the Administrative Procedures Act 1993 (the APA), see Young (1984), Weinberg (1991) and Upham (1993). On 16 July 1985, the Supreme Court held that administrative guidance could not be forced through if there was ‘a clear contrary indication of the will of the parties’ (Sugai and Sonobe 1999: 118; Hanrei Taimuzu 1986). Regarding administrative guidance related to applications, the APA, in Article 33, also established that ‘continuing the administrative guidance against the wishes of the applicants is not allowed’ (Sugai and Sonobe, 1999: 149). Although this provision is not applicable to the administrative guidance rendered by the organs of local public entities (Article 3), they shall endeavor to take necessary measures (Article 46).

12. A city official in Yokohama City told me: ‘When applicants file an application that violates the BA, we often withhold action on it. However, if we go too far, we could be sued by them. Then, we sometimes risk losing our jobs when we withhold action. The period of withholding is often seven or ten days, though sometimes it lasts over one or two months’. The city officials are often compelled to do so due to social pressures by the landowners within the BA areas. Of course, these withholdings are not illegal unless the applicants clearly indicate their contrary intentions.

13. I suppose that BAs were institutionalized and modeled on restrictive covenants due to their similarity. However, Itō Gorō, who advanced the enactment of the BSL as an administrative officer, noted that this type of agreement was unique to Japan. See Shūgiin (1950).

14. However, the city of Houston in the US, where there has never been a zoning ordinance, began to enforce restrictive covenants in 1965. See Susman (1966) and Siegan (1970, 1972).
Developments (McKenzie 1994; Blakely and Snyder 1997; Nelson 2002). However, most HOAs in Japan possess no common areas and, therefore, levy no assessment for them, though some of them collect small membership fees. There are a few gated enclaves in Japan now. Third, HOAs in the US often have

Figure 1. A BA Area in Yokohama.

Figure 2. Town Homes in San Pedro, CA.

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15. In 2008, there were 300,800 association-governed communities and 59.5 million residents within those communities in the US. See Community Association Institute (2009).

16. A Japanese newspaper reported that there are at least 800 households living behind gates in Japan in 2008 and the numbers were projected to increase to 2,000 in 2009. See Asahi Shinbun (2008).
the power to inspect private property if violations are suspected, while those in Japan cannot do so unless
the owners grant access to their property. They also have no right to impose fines on deviants.

In 2006, there were 4,806 BAs across the country (Figure 3). Figure 3 shows that BAs have
mainly been used in newly developed residential areas (3,333, 69.4%) rather than built-up residential
areas (1,175, 24.4%), business areas (104, 2.2%), industrial areas (112, 2.3%) or other areas (82,
1.7%). Most of the BAs used in the newly developed residential areas have been ‘one-landowner agree-
ments’, while most of the BAs in the built-up residential areas are ‘voluntary consensus agreements’.

Even when most of the law reports published in Japan are examined, only two court cases concern-
ing BAs can be found. One case concerned the violation of a land use restriction. A landowner within
a BA area built a Tenri-kyō church, while the BA restricted land use only to residential, small offices and
a small surgical clinic. Although the HOA chairperson had earlier approved the plans to build the
church, the new board members later withdrew the approval and sought injunctive relief. On 20
May 1981, the Osaka High Court dismissed their complaint under the principle of faith and trust.

The other case dealt with a height regulation. The chairperson of a board (a developer) sought in-
junctive relief because his neighbor (a gang leader) built a three-storey building within the BA area.

Figure 3. BAs in Japan (1945–2006).

17. Source: Unpublished data provided by the Construction Division, Ministry of Land, Infrastructure and Transport.
18. Although there are some other cases concerning ‘BAs’, they are not BAs prescribed in the BSL, but just private contracts
that are called ‘BAs’.
although the BA only permitted one- or two-storey buildings. On 31 January 1994, the Kobe District Court admitted the claim.\textsuperscript{20}

For five years, I conducted in-depth research into BAs, focusing on Yokohama City. Yokohama is the capital city of Kanagawa Prefecture, the second most populous urban area after Tokyo. Since Japan entered an age of high economic growth in the 1960s, Yokohama developed as a bedroom suburb for people commuting to Tokyo, and the population of the city grew from 1,375,710 in 1960 to 3,648,098 in 2008.\textsuperscript{21}

In 2006, there were 167 valid BAs in Yokohama City (Figure 4).\textsuperscript{22} Yokohama is among the cities that make the most use of BAs; this is because since 1968, the city, which faced rapid and indiscriminate land development, began to induce developers to sell property attached to BAs. As shown in Figure 5, in 1957–2002, about 50\% of the BAs (200 of 378, 52.9\%) in Yokohama were created under the city’s or a developer’s initiative, albeit 55 (14.6\%) were voluntarily created and 123 (32.5\%) were renewals.\textsuperscript{23}

In 2004, BAs included various regulations pertaining to land use (174, 98.9\%), lot size (156, 88.6\%), height (126, 71.6\%), building line (122, 69.3\%), storeys (116, 65.9\%) and ground level (94, 53.4\%) (Figure 6). In most BA areas, there are less than 100 landowners, although there are some BA areas that include over 1,000 landowners. Further, BAs are mostly valid for 10 years (131, 67.5\%), although they often include automatic renewal clauses and are therefore automatically extended.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{BA_yokohama.png}
\caption{BAs in Yokohama (1957–2006).}
\end{figure}

\textsuperscript{20} See \textit{Hanrei Taimuzu} (1995).
\textsuperscript{21} See Yokohama-shi (2009).
Figure 5. Motivations for the Creation of BAs in Yokohama (1957–2002).

Figure 6. Focus Areas of the Regulations in BAs (N = 156, Multiple Answers [M.A.] possible)\textsuperscript{24}

\textsuperscript{24} The building coverage ratio means the ratio of a covered area of building to the site area (BSL, Article 53). The floor area ratio (FAR) is the ratio of the total floor area of building to the site area (BSL, Article 52).
What are the strengths of BAs? Can they be considered as an adequate means for residents to protect their dwelling environments themselves? They could reflect residents’ opinions more or less directly. Narita Yoriaki, a Japanese legal scholar, referred to BAs as ‘a kind of private legislation’ (Narita 1989: 226).^25^ HOAs may interpret and execute their BAs flexibly. Moreover, municipalities can shift a part of the responsibility of protecting the dwelling environment onto the residents. Although zoning restrictions cannot be completely replaced by BAs, the former can be reinforced and elaborated to some extent by the latter.

On the other hand, what are the weaknesses of BAs? First, negotiating and creating a voluntary consensus agreement involves considerable cost and time.^26^ Often, it takes three to five years for residents to establish the original unanimous consent. Since BAs have expiry dates, HOAs must acquire the consent of the landowners before every expiry, unless the BAs have an automatic renewal clause.

Second, it is difficult for the residents to detect violations and enforce BAs. They have to have access to resources such as legal knowledge and funds to meet litigation costs. According to my research concerning board chairpersons, the active members of HOAs are often lay people such as retired persons or nonworking mothers. They often acquire legal knowledge from city officials (85 of 107, 79.4%); however, almost half of them (53 of 107, 49.5%) study by themselves. In addition, some HOAs (39 of 106, 36.8%) collect no membership fee, and other HOAs often collect minimal fees. Therefore, most HOAs have no funds for civil litigation.

Third, landowners who do not enter BAs are free to develop their parcels. They can get a free ride in hospitable environments in the surrounding area without being bound by BAs. HOAs cannot legally stop their developments.

In this situation, how do the residents in Yokohama overcome these weaknesses? Here, we should pay attention to the neighborhood associations in Japan (jichikai or chōnaikai, hereafter NAs). NAs are nonlegal, unincorporated voluntary associations. They are created neither by statutes nor contracts but on a voluntary basis. NAs usually consist of 100–1,500 households.

NAs usually hold various functions and establish a system of mutual assistance. For example, they organize social gatherings and community festivals among the residents; enable recreation, crime- and-fire prevention and garbage collection; ensure that the neighborhood is clean and serve as information channels for the happenings in the city and as vote-gathering machines in their constituencies. In short, NAs have quasi-public characteristics because they provide local public services.

Although membership of the local NA and payment of membership dues are not required by law but are voluntary,^27^ those who do not participate in the NAs or do not pay their dues often feel social pressures exerted by their neighbors.^28^
While some scholars trace the history of NAs to gonin-gumi (the five-man group), the small administrative units that collected taxes and reigned over the people in the Edo period, the NAs are generally said to be rooted in the small municipalities that were left behind in their consolidation in the Meiji Era. In the 1940s, the Japanese Government organized NAs to compel people to join the war effort. Although NAs were banned by General Headquarters (GHQ) through Potsdam Ordinance 15 in 1947, they survived and were restored even before the ordinance became invalid in 1952.

In 1993, there were 298,488 NAs across the country (Nakata 1996). In 2005, Yokohama had one Yokohama NA Union, 18 Ward NA Unions, 247 District NA Unions, 2,845 NAs and 1,272,928 households (85.1% of the households had joined NAs) (Figure 7), and the NAs were organized in a hierarchical structure. Most of the households pay a membership fee [about 300–500 yen (US$3–US$5) per month] to the NAs. The city also provides all the NAs with annual subsidies for regional environment management [about 1.27 billion yen (US$12.7 million) in 2004]. Some rich NAs possess funds exceeding 10 million yen (US$100,000). The president of the Yokohama NA Union has been referred to as ‘the shadow mayor’ of the city. When Yokohama City sets and changes zoning regulations, it sometimes informally seeks the NA’s opinions about regulations in advance.

Figure 7. Percentage of Households that Joined NAs in Yokohama (1975–2005).

29. Source: Yokohama-shi Shimin Kyōdō Suishin Jigyo Honbu (2006: 1). Although the percentage of households that join NAs decreased from 94.9% in 1980 to 85.1% in 2005, at present, it still remains high.
30. NAs in Yokohama are said to have their origin in health committees that emerged in 1890, though many NAs were created by the initiative of the city after 1956.
When BAs are created or enforced, NAs often provide resources such as money, manpower and meeting places, though they have no legal relation to BAs. According to my research, almost half of the HOAs receive subsidies from NAs. The members of these HOAs are often selected from NAs. HOAs often hold meetings at the NAs’ halls. Furthermore, some NAs draw up rules containing quasi-regulations that resemble those of the BAs in their neighborhoods. They also impose various social sanctions on those who violate these quasi-regulations and urge them to stop or modify their construction by referring to them.

We will now look into a case involving the creation of a BA, as well as several dispute cases (Table 1). All the cases are based on in-depth interviews with the board members of the HOAs. Although I explored four BA creation cases and 26 dispute cases (Hasegawa 2005), this article deals with only one creation case and seven dispute cases.

3. Creation of a BA

Mobilizing and negotiating with landowners to create a voluntary consensus agreement is a difficult task. In newly developed areas, developers often sell subdivisions with one-landowner agreements attached; while in built-up areas, all residents have to arrive at a unanimous consent to create a voluntary consensus agreement.

In Yokohama, NAs often provide resources to those who arrange for the creation of a voluntary consensus agreement. In the following case, the chancellor of the NA took the initiative to create an agreement with the help of the NA. At the same time, for residents, making a BA implies a struggle for their property. BAs can occasionally function as legal weapons against outsiders.

3.1 Case 1: A Bachelor’s Apartment in a Residential District

The board chairperson of this HOA had been a newspaper journalist at one time. He stated the following:

About twenty years ago, when we didn’t have a BA yet, one resident learned that a developer was about to build a three-storey bachelor apartment for an electronics maker in our neighborhood. At that time, I was the chancellor of our NA. Although the apartment conformed to the building regulations, our NA was opposed to it because it would obstruct treasured sunshine as well as corrupt public morals in our neighborhood. If an apartment for women was built, bachelors might have roamed around it at night.

Initially, he was unaware of BAs. When his wife talked about this building plan at the parent–teacher association, one of the members introduced her to a city council member. The member recommended that they create a BA. The city official also encouraged them to make a BA because it was helpful for municipalities to induce developers to stop or change their building plans. 31

This couple, with eight of their neighbors, persuaded and convinced the other neighbors to join this BA. For a period of three months, almost every night, they gathered at the chairperson’s house to discuss the BA. Eventually, approximately 150 landowners joined the BA and the city approved it. He assumed a newly created position as the board chairperson of the HOA. He stated as follows:

Of course, the developers didn’t join this agreement. Instead, they threatened to sue me. I told them to sue the city because the city approved the BA. However, about one year later, they eventually changed their plan. They built a two-storey corporate dormitory for both men and women, instead of a three-storey bachelor

31. It was legally possible unless there was ‘a clear contrary indication of the will of the parties’. See footnote 11.
<table>
<thead>
<tr>
<th>Case</th>
<th>Title</th>
<th>Case Category</th>
<th>Adverse Party</th>
<th>Violation against the BA</th>
<th>Commitments of the NA</th>
<th>Consequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A bachelor’s apartment in a residential district</td>
<td>A creation case</td>
<td>Developer</td>
<td>Nothing</td>
<td>Committed</td>
<td>The developer changed his plan.</td>
</tr>
<tr>
<td>2</td>
<td>The location of an abutting house</td>
<td>Neighbor</td>
<td>Nothing</td>
<td>Not committed</td>
<td>The chairperson of the HOA recommended reconciliations.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>A small grocery store in a residential district</td>
<td>Neighbor (owner of the retail store)</td>
<td>Land use</td>
<td>Committed</td>
<td>The owner closed his store and moved out.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Eave height violation</td>
<td>Neighbor</td>
<td>Eave height</td>
<td>Committed</td>
<td>The board requested that the violation be corrected, but it was in vain.</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Minimum lot size violation</td>
<td>Developer</td>
<td>Lot size</td>
<td>Committed</td>
<td>The board sought a temporary injunction and stopped the subdividing.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Oblique line violation</td>
<td>Developer</td>
<td>Oblique line</td>
<td>Not Committed</td>
<td>The developer reconstructed a part of building.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Apartment building</td>
<td>Neighbor</td>
<td>Nothing</td>
<td>Committed</td>
<td>The neighbor changed his plan.</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Development of retarding basins</td>
<td>Developer</td>
<td>Nothing</td>
<td>Committed</td>
<td>The developer changed his plan.</td>
<td></td>
</tr>
</tbody>
</table>
apartment. Thanks to our discussions over the BA, our neighbors have become closer with each other. Now, we exchange friendly greetings when we meet each other in the street.

In this case, we find that creating a BA could be the means to fight against outsiders and protect property. Although the BA is not applicable to those who do not join it, resident movements often put substantial pressure on such people and persuade them to change their minds. The developer neither joined the BA nor violated any other regulations. However, the developer changed his plan and eventually built a two-storey corporate dormitory, perhaps because he wanted to prevent a delay in construction. As Friedman (1975: 697) put it, law can be ‘an extension of physical and social struggle’. The board chairperson stated as follows:

While building regulations in Western countries are detailed and elaborated, the BSL in Japan is broad and full of loopholes. We hope to live in a quiet residential area, but our legal system allows developers to build buildings that are not harmonious with the surroundings. Developers are motivated only by money. Creating a BA, therefore, is a kind of civic movement.

On the other hand, the process of creating this BA developed and strengthened the social ties within this community. They became ‘closer with each other’ in this process.

In addition, the NA provided the resources to create a BA. As the chairperson of the board was also the chancellor of the NA from the beginning, he could make use of resources of the NA; he was acquainted with the neighbors and easily utilized the social networks in the neighborhood.

Tocqueville (1945) stressed the importance of associations as the foundations of democracy. Coleman (1988) and Putnam et al. (1994) also attached high value to certain types of social networks known as ‘social capital’. Coleman noted that the resources of one relationship are appropriated for use by others where persons are linked in multiplex relations (Gluckman 1967; Coleman 1988: 108–109). NAs are a kind of nonlegal social relationship that can be appropriated for the use of other legal relationships.

4. Cases of Dispute within BA Areas

According to the survey conducted, the boards of the HOAs detect violations in various ways: calls from residents (46, 55.4%), scrutiny of submitted blueprints (43, 51.8%) and information from city officials (30, 50.6%) (Figure 8). When the boards discover violations, most of them request correction (oral or written) (56, 80.0%); often, they ask the city to induce landowners to follow the BA (47, 67.1%), though a lawsuit is rarely filed (1, 1.4%) (Figure 9).

In fact, in Japan, as well as in Western countries, resorting to the law is often the easiest way to destroy social relations among neighbors. Although social relations in the neighborhood are often sustained by personal considerations or attachments, the legal system works well when legal rules are applied impartially and objectively without consideration for the person.

32. Courts are also used ‘as a weapon marshalled by disputants to enhance their power and influence’. See Merry (1979: 919).
33. Here I call social relationships that are prescribed by any existing express legislative enactments as legal relationships, while those that are not prescribed are nonlegal ones.
34. Weber (1978: 975) discussed purely objective considerations in the process of bureaucratization in Western countries. ‘“Objective” discharge of business primarily means a discharge of business according to calculable rules and ohne Ansehen der Person (without regard for persons)’. Luhmann (1985: 219) also pointed out, ‘Equality before the law means: specification and universal use of decision-making criteria ohne Ansehen der Person’. He also said, ‘The mechanisms of the legal system are geared to operate ohne Ansehen der Person’ (Luhmann 2004: 171).
When people enter disputes or quarrels pertaining to land with their neighbors, they may move out in order to avoid their neighbors and withdraw from their relationships (Felstiner 1974), irrespective of whether or not they live in BA areas. If they find a more desirable neighborhood, they may move there, which implies a kind of ‘voting with their feet’ mechanism (Tiebout 1956).

However, since residential moves are often expensive alternatives for those who purchase houses in the suburbs as retirement options, residents often have to deal with disputes in the neighborhood.\footnote{35}{Also see Danzig and Lowy (1975).}

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\textbf{Figure 8.} Methods Used to Detect Violations \((N = 83, \text{ M.A.})\).

\textbf{Figure 9.} Actions Taken against Violations \((N = 70, \text{ M.A.})\).
In this case, how can they make use of BAs in their neighborhood? Is resorting to legal rules always disruptive to their relationships in the community? It may be easy for disputants to resort to the law if they expect to never see one another again (Merry 1979: 920), but how do they deal with disputes if they expect the relationship to continue in the future?

Since the survey did not reveal how residents actually resolved their disputes in the BA area, we will explore several dispute cases in detail. In Case 2, there was no violation against the BA. On the other hand, Cases 3, 4, 5 and 6 were violation cases.

4.1 Case 2: The Location of an Abutting House

Residents often consult with the board about various problems, whether or not these problems are related to BAs, because such inquiries are convenient and inexpensive for most residents, compared with inquiries of lawyers.

In this case, resident X consulted the board chairperson by phone about the location of resident Y’s abutting house under construction. X felt that Y’s house would stand too close to his. The chairperson, however, correctly remarked that Y’s house complied with the BA and other building regulations, judging by Y’s blueprint.

Moreover, the chairperson told X, ‘Although there are no violations against the BA, if you simply cannot put up with it, you should discuss improvements with Y. If both of you like, I could also intervene in your dispute, not as a chairperson but as a neighbor’. Eventually, X did not request the chairperson’s intervention.

In this case, the chairperson referred to the legal rules as a legal actor. At the same time, he made an offer to intervene as a neighbor and suggested a settlement. He was an adjudicator who referred to objective criteria as well as a mediator who mediated in the neighborhood. As Luhmann (1992: 162) put it, in conflict mediation, Justitia ‘takes off her blindfold for a while and sees reality as it is, namely multivalued’. After referring to the legal rules, the chairperson also removed his blindfold to see the multivalued everyday life in which the residents have to live together in the future.

In addition, building good relationships can also serve as the backbone of the BAs. The board chairperson said, ‘The motto of our BA area is “the BA of everyone, by everyone, for everyone”’. In this sense, utilizing legal rules is not always disruptive to relationships in the community. At least the board tried to strengthen the social ties among the neighbors by referring to legal rules.

Furthermore, to give advice to neighbors is also strategic behavior by the board. The chairperson mentioned, ‘If we had not given any advice to them, they would have developed distrust of the board and withdrawn from the BA after its expiration. This is why we kindly give advice to any inquiries’.

Such intervention was very different from the traditional dispute resolution that Kawashima once illustrated. The chairperson was not a higher ranking person but an office worker. Both he and the

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36. Genn (1999: 121) pointed out, ‘What people involved in neighborhood problems were looking for overwhelmingly was advice on how to solve the problem’.

37. Also see Luhmann (1999: 71–72). In the US, many guidebooks for HOAs advise ADR before litigation. See Budd (1998) and Coleman and Huss (2006). The Davis-Stirling Act in California also encourages mediation as an alternative to litigation (Section 1369–1520).
disputants did not stop the dispute without making their rights clear. Instead, they tried to settle their dispute by utilizing the legal rules strategically.

4.2 Case 3: A Small Grocery Store in a Residential District

Y opened a small grocery store in a residential district in the BA area, which was in breach of the land-use restriction in the BA. When Y’s neighbor X (an office worker) asked whether it was a grocery store, Y answered that it was a warehouse. Y usually closed its shutter. However, he milled rice in it, conducted an advertising campaign, used his auto truck for transporting his goods, sold rice, liquor and kerosene and offered a parcel delivery service. X was disturbed by the noise of the rice milling machines and the foreign odor of rice).\(^{38}\)

X asked for advice from the city, the HOA and the NA. Both associations requested Y to shut down the store within a year. However, as Y continued to run his store even after one year, the NA wrote an article on this issue in the local newsletter with his name and address written out clearly and ejected him from the NA. As a result, some residents who bought rice from his store stopped doing so. Then, Y hired a lawyer. He contended that this BA was unconstitutional because it deprived him of his business right. He also argued that the NA had defamed him, reaching the level of an act of outrage.

Then, the board of the HOA followed suit; their lawyer was a resident of the same neighborhood. The board contended that Y should not have moved and opened his store in this neighborhood because he knew that it was a BA area.

The city recommended both X and Y negotiate with each other. Both discussed this issue several times in the hall of the NA but in vain. X reported the discussion to the NA as follows:

I believe that civil litigation among neighbors wastes their time, energy, and money. Whatever the results may be, it might jeopardize mutual relations. So I suggested to him that it would be better if we tried understand each other and come to a settlement rather than litigate. I tried to discuss with him in a friendly and compassionate manner, not disputatiously. However, he evaded my questions. He answered, ‘I try to do my best. This problem is crucial to the survival of our family. My wife has a problem with high blood pressure, and my son has a leg problem...’ He seemed to feel inwardly insecure about running his store, though he showed no remorse, asserting that it was a warehouse. He held a grudge against us because he lost his customers due to his ejection from the NA. He thought that was one of the reasons his sales fell.

He was running his store in an unostentatious manner; nonetheless, he closed it and moved out in a few years.

In this case, both X and the board of the HOA referred to legal rules.\(^{39}\) However, X cared about neighborliness, trying to keep peace with Y by suggesting settlement and speaking to him in a friendly and compassionate manner. He resorted to the legal rules as a legal actor, though he also tried to reconcile with Y, acting as a good neighbor; this is because he expected the relationship to be continued in the future. As with Case 2, he tried to build a good relationship with his neighbor, based on the legal rules.

In addition, the social network of the NA played an important role. The social sanction against Y was very hard and fast. The announcement of the deviant’s name and his expulsion from the NA is a kind of punishment and public flogging, though it is not considered illegal. As Ehrlich (1962: 38. Although X could have asserted his claim under the nuisance law, it would have involved considerable costs and been difficult because the harm was not substantial.

39. If the board of the HOA had filed a suit against Y, it would have won the case.
73–74) pointed out, ‘even today, exclusion from the community…, withdrawal of credit, loss of position or of custom, is the most efficacious means of combating insubordination’.

In the next two cases, the HOAs as well as NAs accused a developer of deviance without any hesitation because either the social ties were broken down (Case 4) or the deviant was not a neighbor but an outsider (Case 5). In both cases, the NAs also provided economic aid to the HOAs.

### 4.3 Case 4: Eave Height Violation

Based on a phone call from X, the board chairperson of the HOA (an office worker) learned that the house of his neighbor Y, which was under construction, appeared to be too high. At first, however, due to a misunderstanding, the board thought that Y had violated the ground-level regulation (ban on a change in level) as well as the eave height regulation (23.0 ft). In fact, the former was prescribed only in the original agreement before revision.

When the board requested Y for permission to inspect his house, he refused. Then, to put pressure on him, the board conducted an inquiry survey in the newspaper of the NA within the BA area, which asked whether or not they should condone a violation against the ground-level regulation. Most of the residents answered in the negative.

Thus, Y hired lawyers and challenged the board, stating that there was no regulation concerning ground level in the BA and that the inquiry survey deprived him of his right to live in peace. The board also employed a lawyer by getting financial support [750,000 yen (US$7,500)] from the three NAs within their BA area because the board had no savings. Based on the lawyer’s advice, the board learned that Y had only violated the eave height restriction in the BA and that the BA had no regulations about ground level. The lawyer also advised the board to discuss the litigation with all the landowners because enforcement was not obligatory according to the BA.

Then, under the assumption that Y violated the height regulations, the board tried to hold a meeting of all the landowners to discuss the litigation and put this issue to a vote. In response, however, Y distributed the following bills to the landowners a week before the meeting.

> I have not acted against the BA. Please be opposed to the litigation, abstain on a vote, or cast a blank ballot. Even if my house were to violate the BA, the violation is not so serious as to be corrected through litigation. It would cost me about over 10,000,000 yen (US$100,000) to correct the breach, though it has little influence on adjacent land.

Perhaps because of these bills, the meeting was adjourned owing to scanty attendance. The next year, the board hired a building investigator, eventually persuaded Y to allow an inspection of his house and detected that the building’s height was in excess of the regulated height by 4.8 inches. Thus, the board organized a general meeting again and put this issue to a ballot. The vote was 184 (pro) to 295 (con). Consequently, the board abandoned the litigation.

In this case, the board requested Y to correct the violation uncompromisingly because the social relations of the neighborhood were broken. Although the BA was not enforced eventually because a sufficient number of residents did not agree with the litigation, the board exhaustively fought against Y. The board chairperson (an office worker) mentioned, ‘Negligible as the breach was, we could not forgive him. It was a moral issue rather than a legal one’. In fact, it is difficult to tell whether the courts would have ordered a demolition of the part of Y’s house even if the board had sued because his breach was slight. However, the board pressed on with the conflict. It seems partly because the board was afraid that the same thing would happen again on other parcels and partly because it was put under pressure to take action by X. Regardless, when either social ties are broken or absent, the application of the BAs can function as a weapon.
In addition, the three NAs played an important role. They provided the board with funds so that the board could employ a lawyer and a building investigator, though the board recognized that the HOA was supposed to save money in preparation for litigation. The board chairperson said: ‘Of course we knew that it was more appropriate for us to save money than to get support from the NAs. Now, we plan to save for litigation cost by ourselves’.

4.4 Case 5: Minimum Lot Size Violation

The board of an HOA found out that developer Y was about to subdivide his parcel within the BA area into two parts, which would violate not only the minimum lot size restriction (1,776 sq ft) but also the building line regulation (3.3 ft) of the BA. The board requested the city to put pressure on Y. As Y requested discussions with the board, both parties talked about this subdivision; however, this discussion ran into rough waters. Y explained that he was unaware of the BA area and reiterated his desire to subdivide, though he knew that he was bound by the BA. The board chairperson (a retired high school teacher) argued against Y as follows:

We cannot condone your clear violations. We, the members of the board, must act as representatives of 1,300 landowners within this building agreement area. Moreover, if we should overlook this violation, it will also have a negative effect on other building agreement areas in Yokohama. We are ready to file a suit. Stop subdividing.

The board soon determined to seek a temporary injunction according to its BA. Since the board had little savings and the area of the HOA and that of the NA overlapped, the board informed the residents of this issue through the newsletter of the NA and borrowed money to cover the expenses of injunction (deposit money) from the NA. It also launched a signature campaign against subdividing and finally gathered about 10,000 signatures to present as documentary evidence in court.

The Yokohama district court approved the injunction. The board deposited 4,200,000 yen (US$42,000) as security with the court. Eventually, Y sold this land without subdividing it. The deposit money, therefore, was returned to the NA.

In this case, the board was able to make a strong protest against Y and insisted on their rights without hesitation. This was partly because Y was not a neighbor and partly because, like Case 4, the board was also afraid that the same thing would happen again within and without the BA area. Moreover, the board members seemed to feel a sense of responsibility to protect their residential environment as landowners and build up their self-confidence. Tocqueville (1945: 251) pointed out that ‘the humblest individual who co-operates in the government of society acquires a certain degree of self-respect’. Membership of the board seems to be considered a public position in Yokohama.

The NA also played a significant role. It issued its newsletter containing the article about the HOA and lent the board of the HOA the deposit money that was temporarily necessary.

In this neighborhood, the areas of both associations overlapped; residential environmental problems that had arisen within the BA area were often considered as those of the NA. The resources of the latter could be appropriated by the board of the former.

Of course, this does not mean that the board confused both the associations. They seemed to draw a distinction between both; they consulted with the NA and lent money with the approval of it. However, this NA decided to lend money to the board not by a majority vote but by a high-level decision. If it had taken a vote, it could have reached a different decision like the board of the HOA in Case 4.

In the next case, the board of the HOA corrected the breach without any support from the NA because the opposite party happened to be daunted by the threat of litigation.
4.5 Case 6: Oblique Line Violation

Oblique line regulations limit the height and shape of a building to a predetermined oblique line to ensure sunlight for the adjacent land on the north side (Figure 10). In this case, a developer submitted blueprints of Y’s new house according to the provisions of the BA to the board. The board chairperson, however, missed the violation of the oblique line regulation in the BA and approved the construction.

When the building was about to be completed, X (the neighbor on the north side) found that the shadow that Y’s new building cast over her house had extended by 3.3 ft. Then she filed a claim with the chairperson. At first, X made a complaint against the chairperson’s mistake, though soon she stopped doing so because the chairperson excused himself by saying that he was not a professional. Although he consulted the official of the city, the official tried to avoid intervening in dispute by saying ‘the BA was just a private contract’.

Although both X and the chairperson discussed the issue with the developer twice, the discussion ended without any progress. The developer said the following:

"We don’t have the responsibility of correcting it. The fault lies with the city official that failed to find the violation. Now we have already almost completed the building. To correct the breach, we have to tear down and rebuild the upstairs part. It would cost about six million yen (US$60,000) and be difficult because the building is made of steel, not wood."

Although the chairperson called on Y (a teamster) to come to the negotiating table, Y rejected and said that he had no idea about building. Eventually, the developer suggested a compromise solution to pay 1,200,000 yen (US$12,000) to X as compensation, but X rejected it as follows. ‘I would like to keep living here so I want the developer to correct the breach, not to pay money’. The developer also suggested that the board go halves with the developer on the cost because the board missed the breach, but the board declined.

Finally, both X and the chairperson mailed a content-certified letter to the developer’s headquarters requiring the violation to be corrected. In the letter, they added, ‘If you do not respond in a sincere manner, we could file a suit against you’.

Then, the developer suddenly changed their attitude. The submanager said that they would bear all the necessary expenses for the alteration to the building. At this time, both X and the chairperson also

Figure 10. Oblique Line Regulation.
asked an experienced architect to join the negotiations with the developer. The architect was X’s friend, so she worked for free. As a professional, she came up with many counterproposals during the discussion. In the end, the developer redid the roof to correct the violation. The chairperson said:

When we mailed the developer the content-certified letter, we actually were not ready to sue them. We did not have the money. However, it turned out to be appropriate to mail the letter and ask the architect after all.

In this case, the content-certified letter that was sent to headquarters as a last resort worked as a weapon. In addition, the architect also helped the board. Furthermore, the NA’s support was indispensable to the board. As the chairperson recognized, the board had no money to file a suit. If the developer had done nothing in defiance of the mail, the board would not have dealt with the breach unless the NA helped the board. In this case, since the board of the HOA and the NA had not been in contact on a routine basis, the latter might not have helped the former.

5. Dispute Cases Outside BA Areas

Even if a voluntary consent agreement is created, parcels whose owners do not join the BA are not legally bound by it. This sort of BA area can be likened to Emmenthal cheese with several holes (Figure 11). These parcels are often used (or planned to be used) for stores, offices or buildings that

Figure 11. A BA Area with Holes (x marks).40

are unsuited to the surroundings. When owners of these parcels build unharmonious buildings after the conclusion of the BA, neighbors are seriously demotivated by them.

However, even those who do not join the BA are often members of the NAs. Therefore, they are bound by the rules or decisions of the NAs. Sometimes, these rules include not only moral codes or etiquette but also quasi-regulations that resemble the regulations of the BAs. Although some rules are private contracts between residents, others are not, either because not all residents agree to the rules or not all the regulations can be legally enforced. However, though the residents often know that the latter are not legally binding, they obey them out of necessity. We can call rules in the NAs that are not legally binding nonlegal rules.

As Ehrlich (1962: 57) put it, ‘where land or dwellings adjoin, there is the further requirement of customary observance of dictates of morality, ethical custom, decorum, tact, and etiquette’. Moore (1973: 720) referred to the small field that ‘can generate rules and symbols internally’ as a ‘semi-autonomous social field’. Galanter (1980: 162) used the term ‘indigenous law’ to refer to ‘social ordering which is indigenous, i.e. familiar to and applied by participants in the everyday activity that is being regulated’. It could be stated that the neighborhood is a semi-autonomous social field because it generates rules and symbols internally and that its rules are ‘indigenous’ in the abovementioned sense.41

How do residents in the neighborhood apply their rules? How are these nonlegal rules related to the BAs?

5.1 Case 7: Apartment Building

Y bought a plot in the area where a BA was planned to be created by the NA. A realty dealer informed Y that the BA would not be approved by the municipalities; however, it was approved and came into effect several months later. Y refused to join it because he planned to build a five-apartment building.

In this area, there had been a set of nonlegal residential rules made by the developer about 30 years previously, containing regulations concerning land use (single-family house), storeys (one- or two-storey buildings), subdivision, pets and so on. Further, 20 years previously, the NA established new rules on the basis of the residential rules. Then, a BA resembling these preceding rules, but without pet regulations, was made by the members of the NA. Although the BA included regulations of land use (single-family house or one- or two-storey building), maximum height (33 ft) and FAR (120%), Y’s building was 38 ft high and had a FAR of 146%.

The board of the HOA, which consisted of members from the NA, sent Y a letter to persuade him to change his intentions.

Dear Y, We appreciate your readiness to enter into talks with us. We spend time on honest communication, but still seem to differ with each other … Thinking by analogy, before the BA became effective, we urged people to stop smoking based on rules such as ‘it is desirable to stop smoking in this area’. However, now that our BA is approved, our district has become a non-smoking area like those of airplanes or stations. ...In a non-smoking area, you are required not to smoke by dictates of common sense, a sense of public morality, or rules of society, aren’t you? ... In the same way, now we ask you not to smoke, not for economic reasons or legal rules, but by dictates of common sense, a sense of public morality, or rules of society. ... We feel sorry

41. Also see Macaulay (1986).
for you because you were deceived by a dealer who said to you that the BA would not be approved... That is... why we suggest compromise solutions as follows.

1. You could build a three-apartment building and rent it until your daughter enters it in the future.
2. You could build a building if you redesign it by lowering its height as far as possible.

We beg of you to rethink your plan.

After several negotiations, Y agreed to the terms of the board.

According to Hart (1961), who defined a legal system as ‘the union of primary and secondary rules’, primary rules have three defects: uncertainty, static character and inefficiency. According to the rules of the NA, it had been unclear how and by whom a violation of rules should be dealt with. It lacked remedial procedures against violations. In addition, the NA was not an official entity whose declarations were authoritative. Thus, the BA was established to give legal authority to the rules of the NA and to remedy the uncertainty and inefficiency of them. In other words, the nonlegal rules of the NA were ‘restated’ in such a way that they could be applied by the HOA (Bohannan 1965: 36).

However, the board members as well as Y knew that he did not need to follow the BA that he had not joined. Thus, the rules of the NA as primary rules were invoked again;42 the members had little choice but to persuade him by analogy and begged of him to rethink his plan. Even if the board of the HOA had filed a suit against Y, it would not have won the case since he had not joined the BA. Nevertheless, he eventually obeyed the rules of the NA, perhaps out of neighborliness.43

In modern society, legal relations are not reciprocal ones that need local compensatory arrangements such as noblesse oblige or mutual concessions, but complementary ones in which such arrangements are not needed (Gouldner 1960; Luhmann 1999).44 Therefore, when the residents cannot rely on the legal relations based on the BA, they have only reciprocal relations based on the NA to rely on.

In this case, the adverse party Y was a neighbor. Then, how do HOAs respond to outsiders who are not members of the NAs? In fact, the associations refer to the rules of the NAs even if they deal with outsiders.

5.2 Case 8: Development of Retarding Basins

Retarding basins are retention facilities securing land against floods. In Yokohama, there are about 1,600 basins. Since the 1960s, the city has been in financial difficulty and has guided developers to put up basins within the developing residential areas because land reclamation has reduced the ability of the land to absorb water by one-sixth. A retarding basin is usually a cone-shaped hollow surrounded by a fence, located in the low-lying part of the residential area (Figure 12). Most of the basins are owned by developers and often remain undeveloped.

43. Malinowski (1926: 64) pointed out that ‘the fundamental function of law is... to ensure a type of co-operation which is based on mutual concessions and sacrifices for a common end’. What Malinowski refers to as ‘law’ here corresponds approximately to the primary rules of obligation in Hart’s theory. Bohannan (1965: 36) referred to it as ‘custom’.
44. Gouldner (1960: 169) noted, ‘in short, complementarity connotes that one’s rights are another’s obligations and vice versa. Reciprocity, however, connotes that each party has rights and duties’. Legal rights in modern society are concerned with complementarity.
In this BA area, developer Y had two retarding basins, which were not bound by the BA. While residents gave little thought to the possibility that these basins would be developed, Y planned to cover the basins with artificial ground and build 26 single-family houses on them. While the BA prohibited landowners from subdividing into lots less than 1,776 sq ft, the lots planned for subdivision were from 1,346 to 1,529 sq ft.

The residents who lived near the basins were irked and advocated a hard-line stance toward Y. The board of the HOA, however, explained to them that basins could be lawfully developed because they were not restricted by the BA. The board had learned this 16 years previously, when they failed to stop the development on a sloping ground outside the BA area. At that time, the NA made a rule that ‘land use of lots outside or near the BA area is also bound by the BA’. The board dissuaded these residents from pressing unreasonable demands on Y by themselves and conducted the negotiations with Y acting as agent on their behalf.

The board contended that Y should respect the rules of the NA and change his plan. They made the following specific demands: (a) The minimum lot size on the artificial ground should be more than 1,776 sq ft; (b) Y should induce buyers to join both the BA and the NA; (c) Y should construct a walkway between the houses on the basin and adjoining premises to leave a space and (d) Y should match the height of the artificial ground to that of the road by reviewing its reservoir volume. After several negotiations, Y accepted all the requests of the board, except the last one.45 Y constructed a walkway and donated it to the NA.

In this case, Y accepted the requests of the board because Y wanted to prevent a delay in construction. In addition, by bringing this dispute to a successful settlement, Y aimed to make good use of it as a propaganda ploy when they developed other basins in the future.46

Although Y was an outsider, the board could not strongly oppose Y since the rules of the NA were nonlegal. However, these rules showed the solidarity of this community. An Accounts Executive of Y said, ‘We negotiated with the board of HOA as well as the NA because it was in the BA area. If one or

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45. According to the developer, it was impossible to match the heights because of structural problems.
46. After the settlement, Y made a commercial video entitled ‘A Life with the Retarding Basin’ that showed this case as a successful experience.
two residents had opposed our development, we would have ignored them. Legally speaking, we had a right to develop the basins’.

6. Conclusion

As stated above, Kawashima noted that Japanese rarely went to civil courts or used legal rules, but tried to settle disputes through ‘the extrajudicial means of reconciliation and conciliation’. Today, however, at least in the suburban areas of Yokohama, his assumption lacks persuasiveness.

First, in the BA areas, residents took legal rules into account when facing conflicts concerning BAs. It is true that, in most cases, they settled their disputes through compromises or negotiations out of court. However, they recognized their rights, observed their disputes from a legal point of view and referred to the legal rules.47

It has been thought that if neighbors frequently resort to legal rules against each other, their relationships are likely to encounter difficulties. However, the boards of the HOAs tried to find the best ways of utilizing legal rules in the neighborhood. In Cases 2 and 3, they referred to the legal rules as ‘legal actors’, while they also tried to reconcile with the opposing parties as ‘good neighbors’. In both cases, the boards utilized legal rules strategically and tried to build good relationships founded on the legal rules.48

On the other hand, when social relationships between parties were broken (Case 4) or absent (Cases 1, 5, 6, 7 and 8), creating and referring to legal rules could be a potential weapon against the opposing parties. Regardless, in the present-day neighborhood, there is no higher ranking person to initiate reconciliations with disputants.

Second, residents in suburban communities in Yokohama were often quite familiar with legal rules.49 Most of them were not professionals but lay persons. As Giddens (1990: 145) put it, ‘technical knowledge . . . is reappropriated by lay persons and routinely applied in the course of their day-to-day activities’.

Third, when residents discussed and settled their disputes concerning the BAs, NAs played important roles. Although NAs are nonlegal associations, they often act as a seedbed for legal associations (e.g. HOAs). NAs often supported HOAs by providing them with resources and imposing social sanctions on deviants (Cases 1, 3, 4, 5, 7 and 8). The social network of the NAs was ‘appropriated’ by the residents who utilized the legal system. In the neighborhood, there was a dualistic social structure that consisted of the HOAs and the NAs. Both often worked together.

Fourth, in the neighborhood, the residents occasionally referred to and utilized not only legal rules but also nonlegal rules such as the residential rules of the NAs (Cases 7 and 8). The residents often recognized the difference between legal and nonlegal rules and were also aware of their limitations. This is why the board had to refer to the nonlegal rules of the NA (Case 7) and dissuade the residents from pressing unreasonable demands on the developer (Case 8).

47. These negotiations were a kind of ‘bargaining in the shadow of the law’. See Mnookin and Kornhausert (1979).
48. As Feldman pointed out in his research on the fish market at Tsukiji (Feldman 2006), legal rules can serve to strengthen the social ties between parties by satisfying their needs, though residents in the neighborhood in Yokohama also utilize nonlegal rules.
49. On the other hand, according to Ellickson (2005), legal specialists as well as laymen in Shasta County lacked sufficient knowledge about trespass laws, though the latter made use of nonlegal rules.
Here we can see a good example of the intersection of intimacy and impersonality (Giddens 1990: 142). Giddens (1983: 572) noted, ‘neighborhoods involving close kinship and personal ties seem often to be actively created by city life’. From a long-term standpoint, social relationships seem to have been weakened in the neighborhood in Japan. However, residents have tried to create personal ties by acquiring legal knowledge on a piecemeal basis by themselves and making use of legal as well as non-legal rules. They have also developed their sense of ‘reflexive monitoring’ of the diverse social rules (Teubner 1998).

Of course, I do not intend to say that Japan has become a heavily litigious or legalized society. This article only deals with several cases of BAs in Yokohama. Both the CPL and the BSL remain without major amendments.50 However, these cases suggest that legal rules are more ubiquitous than previously thought and that social structure has a decisive influence on the way they work.

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**References**


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50. However, there have been recently several civil litigations about urban landscape. In 2005, the Landscape Law (*Keikan Hō*) was also established. On 30 March 2006, the Supreme Court recognized the enjoyment of landscape as a legal interest. See *Hanrei Taimuzu* (2006).


——. 1986. 568: 42–47.


