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TOWN OF THOMPSON
ZONING BOARD OF APPEALS

MAY 07, 2020

APPEAL NO. 20-03

MEMORANDUM IN SUPPORT OF PETITIONER'S
(705 WASHINGTON AVENUE, LLC) APPEAL

The Petitioner claims an easement by prescription over adjacent property owned by the Town of Thompson. Specifically, the claim is for ingress and egress over an existing driveway to reach a garage located to the rear of the Petitioner's residence.

To successfully claim an easement by prescription the use must be open and visible; under a claim of right; and continuous and uninterrupted for fifteen consecutive years. C.G.S. Section 41-37; *Crandall v. Gould*, 224 Conn. 583, 590, 711 A.2d 682 (1998).

While it is well established that a party cannot adversely possess a governmental entity, in this case the town has only owned the servient premises since 2007. The easement claimed has at least been in existence since the mid 1950's at which time the town's own aerial assessor's maps show the driveway and garage *in situ*, as they are today. Furthermore, both properties' boundaries remain the same.

The easement by prescription as claimed was therefore well established and in place decades prior to the town taking title. When the town did take the title in 2007, it took subject to the existing prescriptive easement. *Frech v. Piontkowski*, 296 Conn. 43, 57, 994 A.2d 84 (2010).

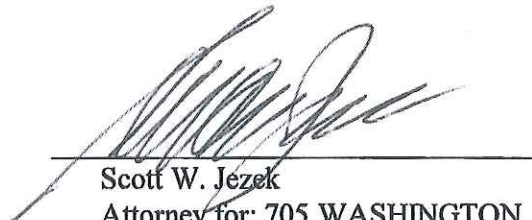
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JURIS NUMBER 105045

It is equally well established law that the fifteen year period may run at anytime over the time continuum at issue. *Frech, Supra*. The Petitioner need not have been the owner when the fifteen year period ran. Therefore, as a matter of law, when it took title, it took together with that easement by prescription. It is apparent from examining the town's Building Department records that the garage was in existence prior to Thompson's adoption of its zoning regulations in 1973 because no permits were taken to construct that garage subsequent to 1973., consistent with the structure's appearance in the 1956 aerial photograph.

Finally, members of a zoning board of appeals are permitted to rely their personal knowledge of a property independently obtained by virtue of them being a member of the general community. *Oakwood Development Corporation v. Zoning Board of Appeals of Torrington*, 20 Conn.App. 458, 567 A.2d 1260 (1990). In this instance, that knowledge, or duly convened meeting and inspection of the property, would demonstrate unequivocally the age of the garage and driveway and that the prescriptive easement claim is decades old and not recent vintage.

Whereof, the Petitioner respectfully requests the Zoning Board of Appeals grant its appeal. Both the underlying facts and applicable law support that conclusion.



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- USLegal
- Legal Definitions
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- Prescriptive Easement

Prescriptive Easement Law and Legal Definition

A prescriptive easement is an easement upon another's real property acquired by continued use without permission of the owner for a legally defined period. State law, which varies by state, defines the time period required to acquire a prescriptive easement. Prescriptive easements may be difficult for an owner to discern, since they do not show up on title reports, and the exact location and/or use of the prescriptive easement is not always clear and occasionally moves by nature of the prescriptive use.

A prescriptive easement arises if someone uses a portion of an owner's property openly, notoriously, and without the owner's permission. A prescriptive easement involves only the loss of use of part of a property, for example a pathway or driveway. State law should be consulted for the exact statutory requirement for an easement by prescription in each state. Easements can be further broken down into easements appurtenant and easements in gross. The characterization of an easement will affect the right to transfer the easement to another. Easements appurtenant are adjacent to the servient estate (the underlying land). If the dominant estate (the property which enjoys the benefit of an easement over the servient estate) is sold or otherwise transferred to another, the easement appurtenant over the servient estate transfers with it.

Easements in gross are unrelated to the easement holder's possession of a dominant estate and do not ordinarily transfer with title to an adjacent property. As a general rule, easements in gross are not transferrable unless transfer is specifically authorized in the document creating the easement. However, if the easement has commercial value, unless there is an express intent to limit transferability, the commercial easement in gross has the same attributes of transferability as other interests in property. Laws regarding transferability of easements vary by state, so local laws should be consulted.

in si·tu

/,in 'sītōō, in 'sētōō/
adverb · adjective

1. in the original place.