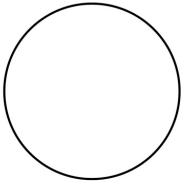
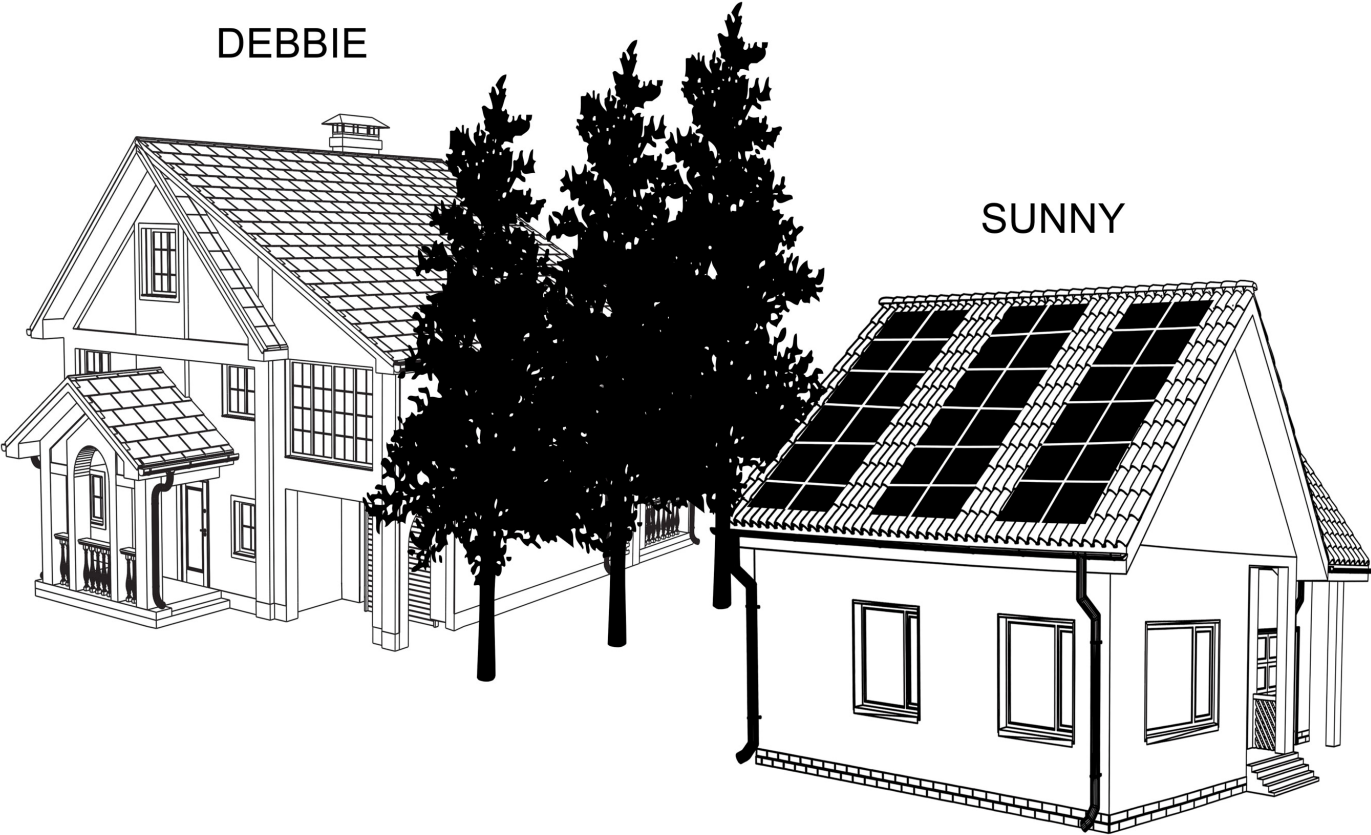


FIG. 166. RIGHT-OF-WAY

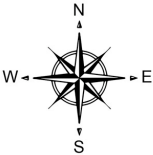
SCENARIO ONE



DEBBIE



SUNNY



Easements – *Characteristics*

- *Affirmative or Negative*
 - *Affirmative* – allows benefited to do something on burden land
 - *Negative* – prevents something from happening on burden land
- *Appurtenant or In Gross*
 - *Appurtenant* – benefit tied to a benefited land
 - *In Gross* – benefit tied to individual
- *Dominant or Servient*
 - *Dominant* – benefited land
 - *Servient* – burdened land

Express Easement

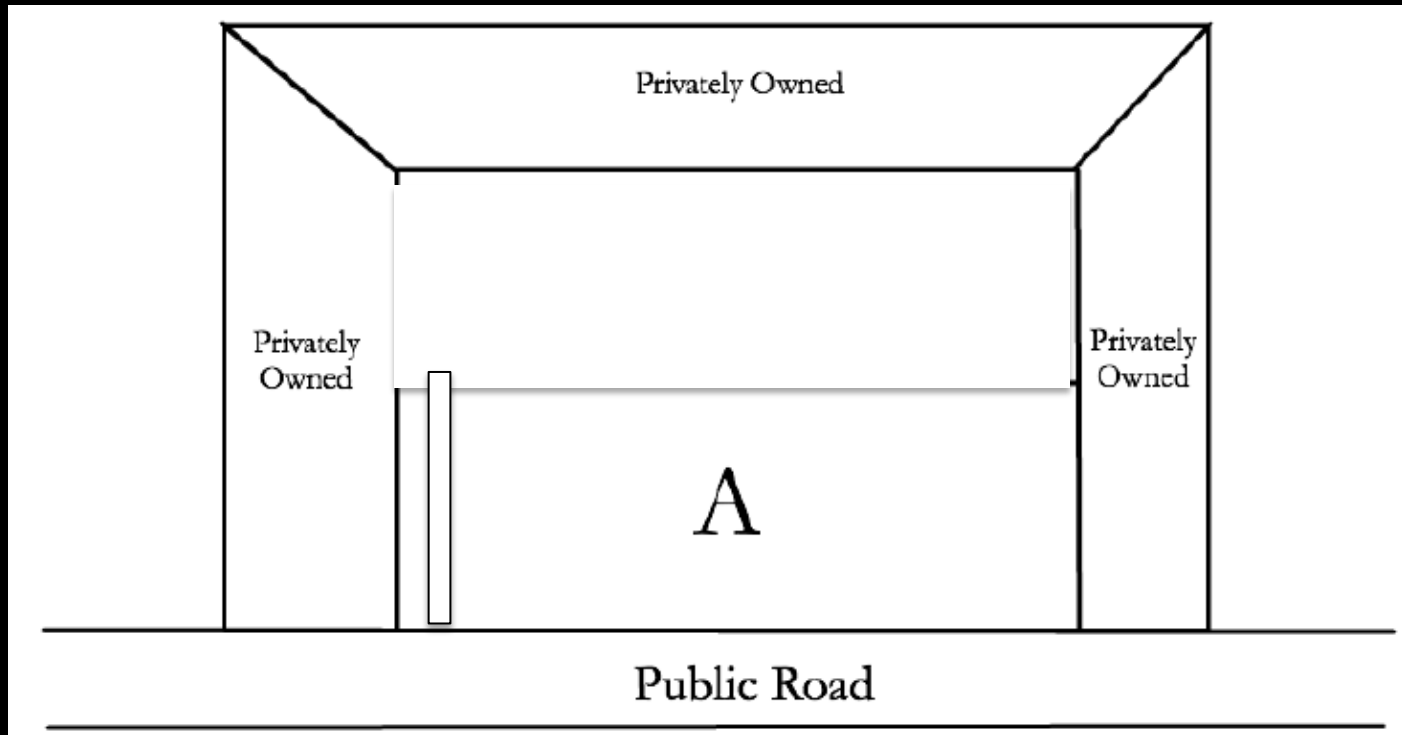
- Parcel sold to B “*subject to an easement for automobile parking during church hours for the benefit of the church on the property at the southwest corner of the intersection of Hilton Way and Francisco Boulevard . . . such easement to run with the land only so long as property for whose benefit the easement is given is used for church purposes.*”
- Also called an **Easement by Writing**
 - Statute of Frauds
- What about benefit in third parties?
- Classifying this easement

Implied Easement

- Easement implied by existing use
- Easement by necessity
- Typically, arise out of a land transaction
 - Not in writing

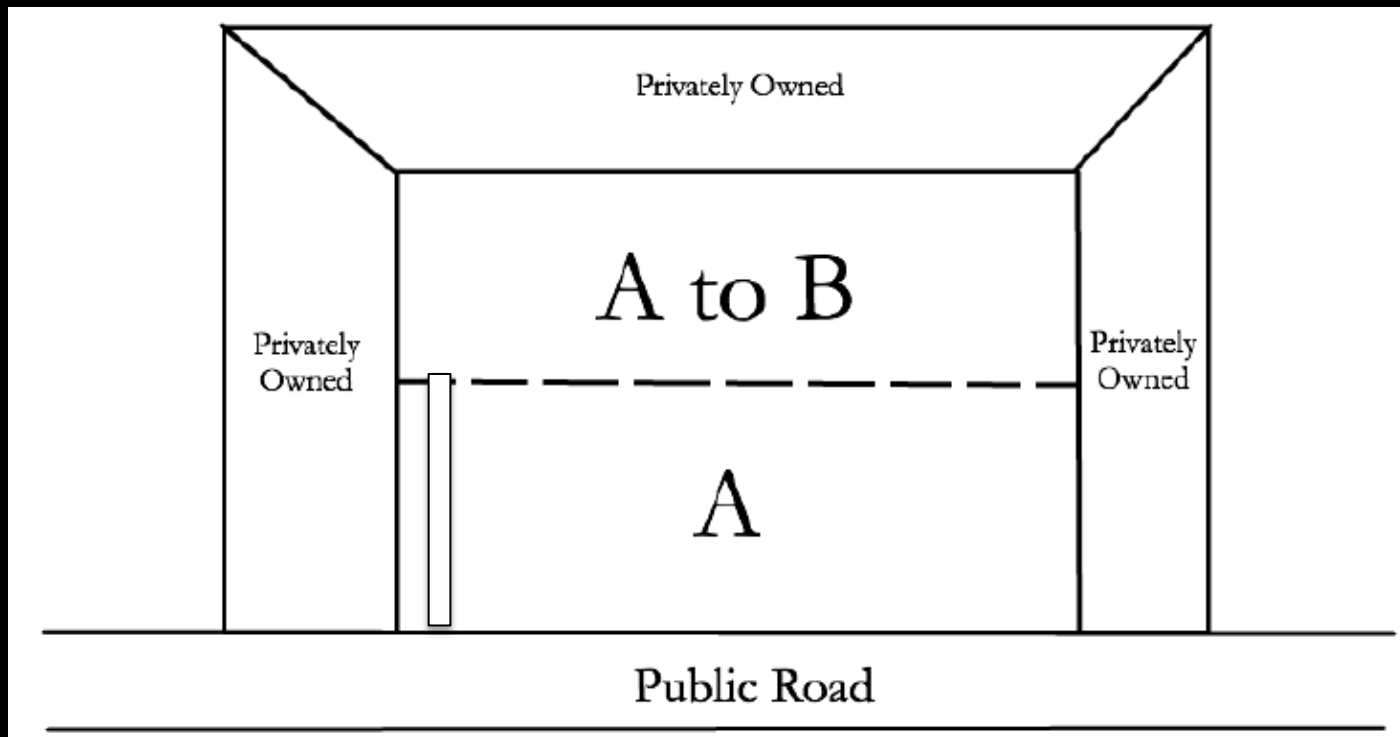
Thomas v. Primus

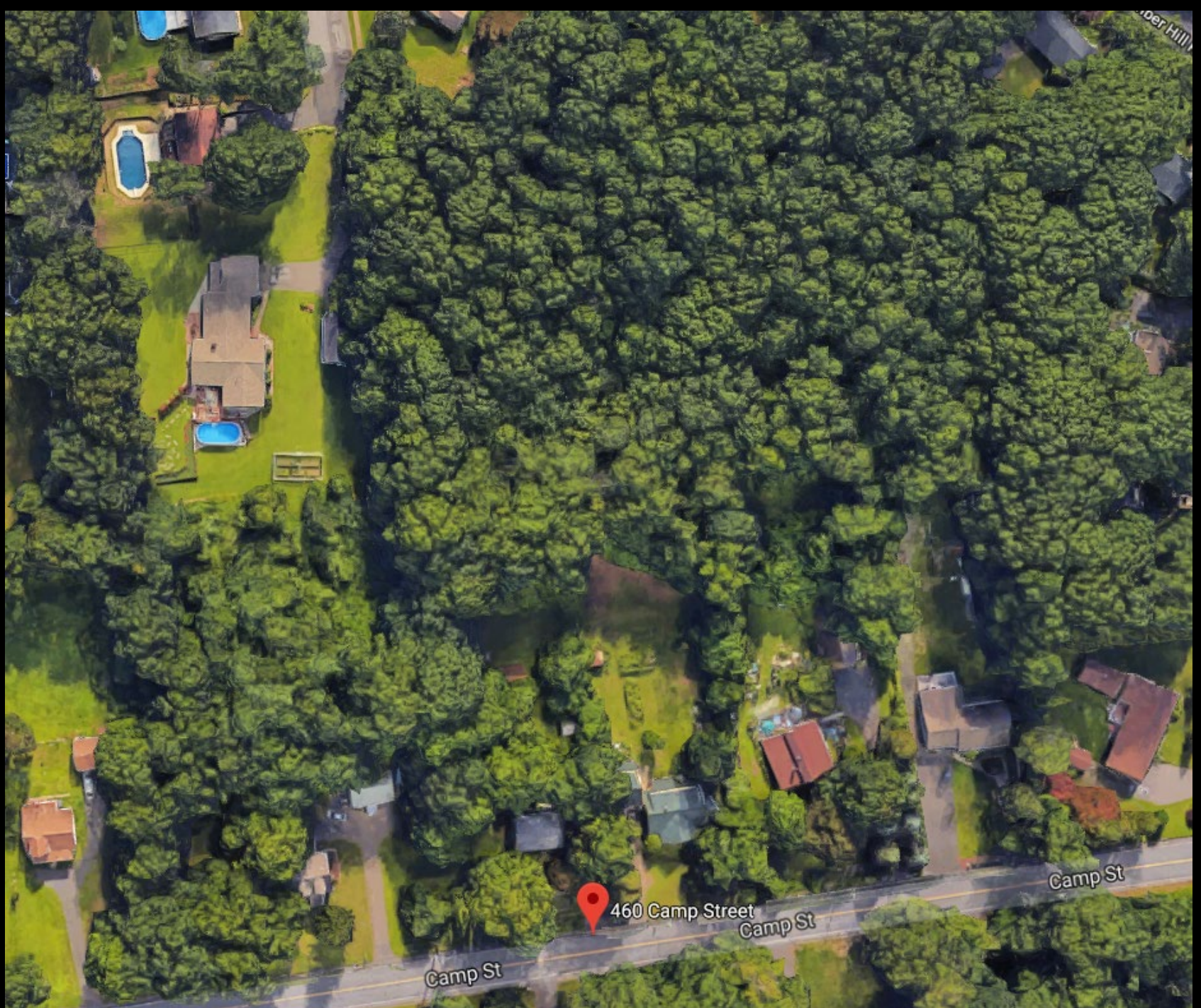
- Single lot owned by Martha Thomas



Thomas v. Primus

- Single lot owned by Martha Thomas
- 1959 – Thomas conveyed B to Arthur Primus
 - Oral agreement use passway
- 1969 – D takes possession (Primus's brother)
- 2002 – P takes possession (Thomas's grandchildren)







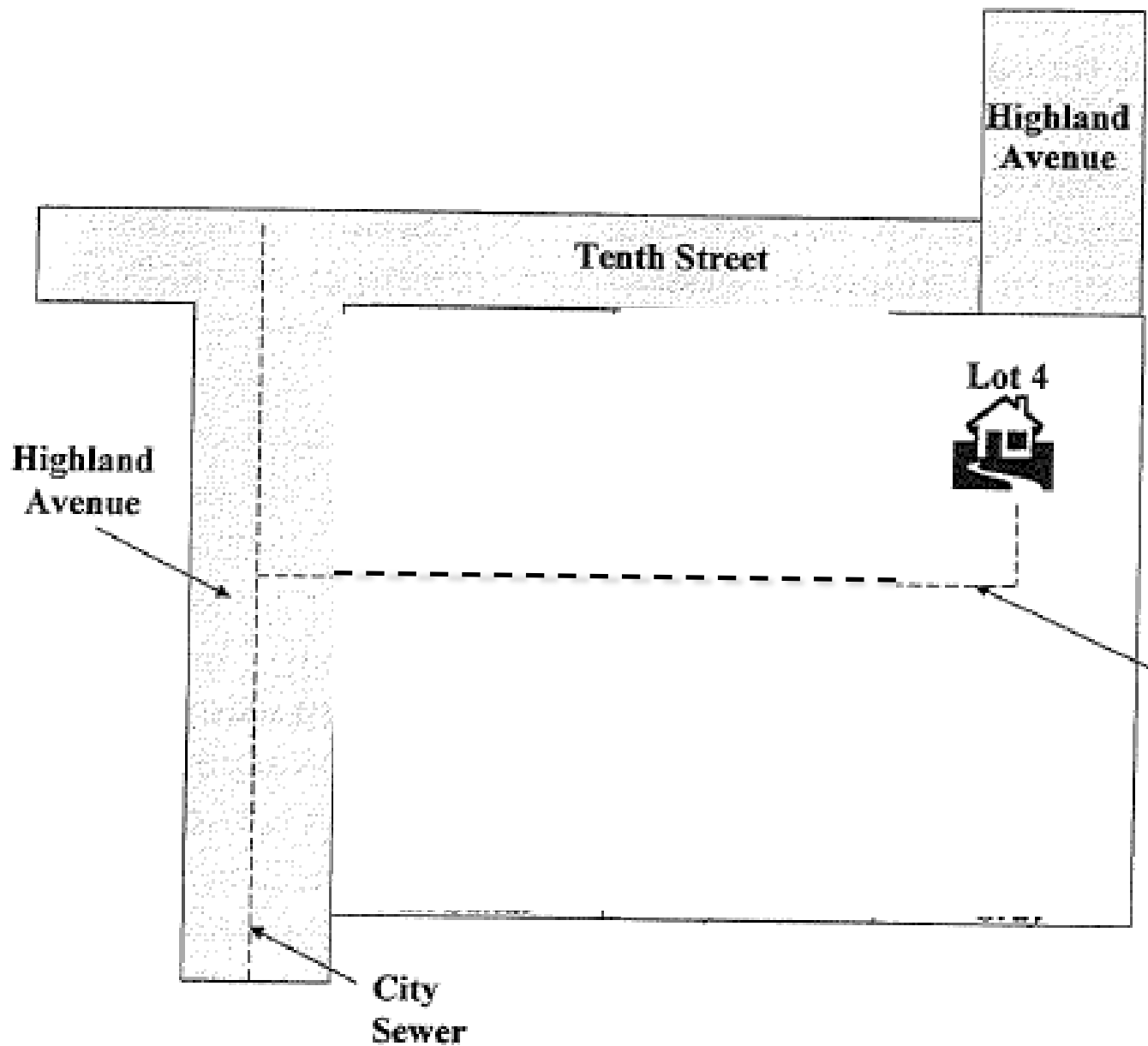
Thomas v. Primus

- 2008 – P wants to sell property
- 2009 – Buyer cancels when learns of right of way
- Action to quiet title
- **Easement by necessity**
 - Initially commonly owned property (unity of ownership)
 - Transaction that creates necessity
 - But court here does not require
 - reasonably necessary for the use and enjoyment of the party's property
 - Not all jurisdictions – many require strict/absolute necessity
- This court following intent based easement by necessity or public policy based?

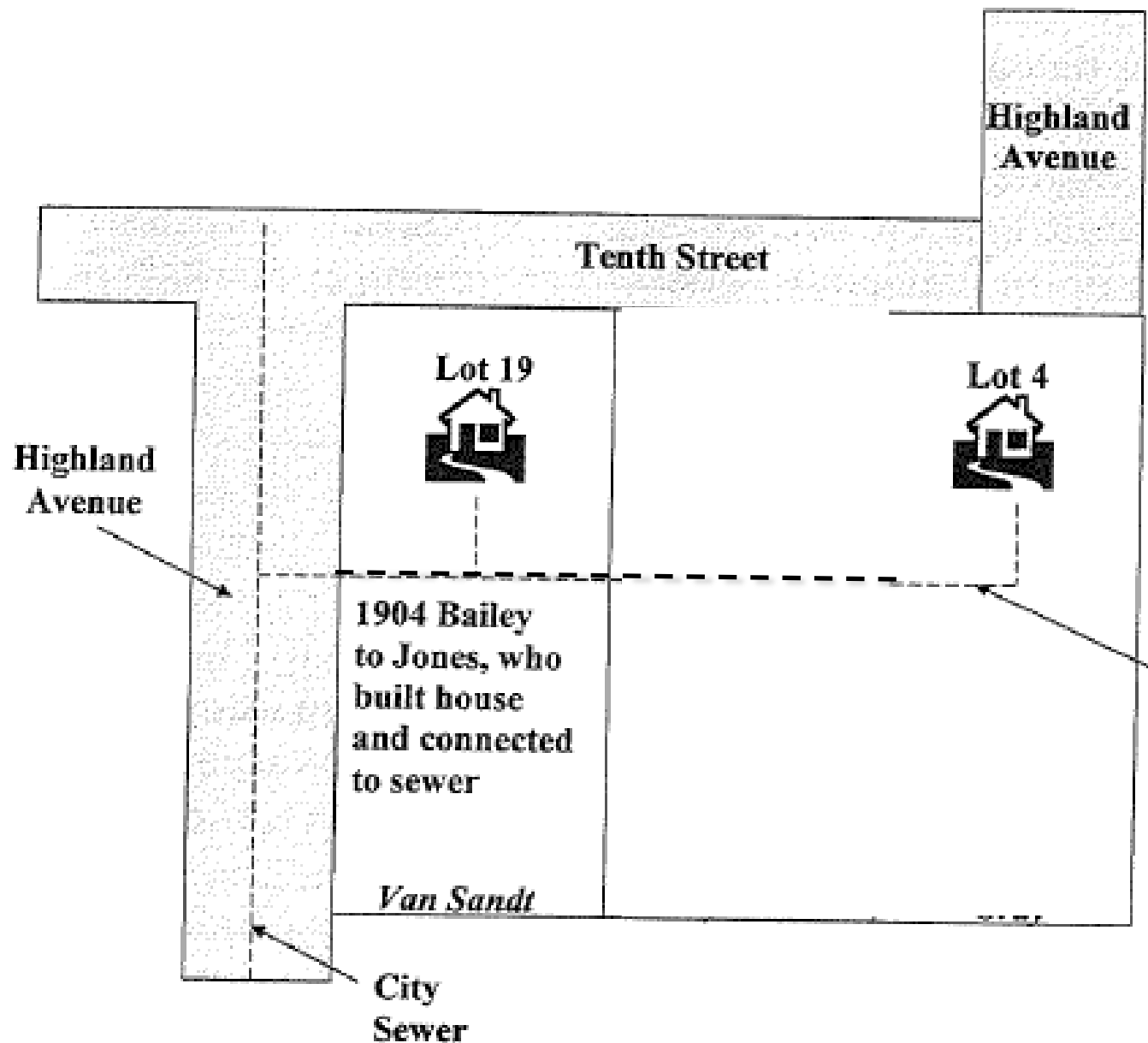
Thomas v. Primus

- What about an **Easement by Implication**?
 - Common ownership
 - Before severance, prior use (*quasi-easement*)
 - Obvious, continuous, and permanent
 - Reasonable necessity
- Works in *Thomas*?
 - Difference in standard if grant or reservation
- How similar to easement by necessity?

Hypothetical



Hypothetical



Hypothetical

