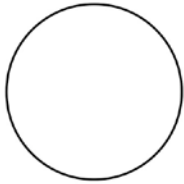
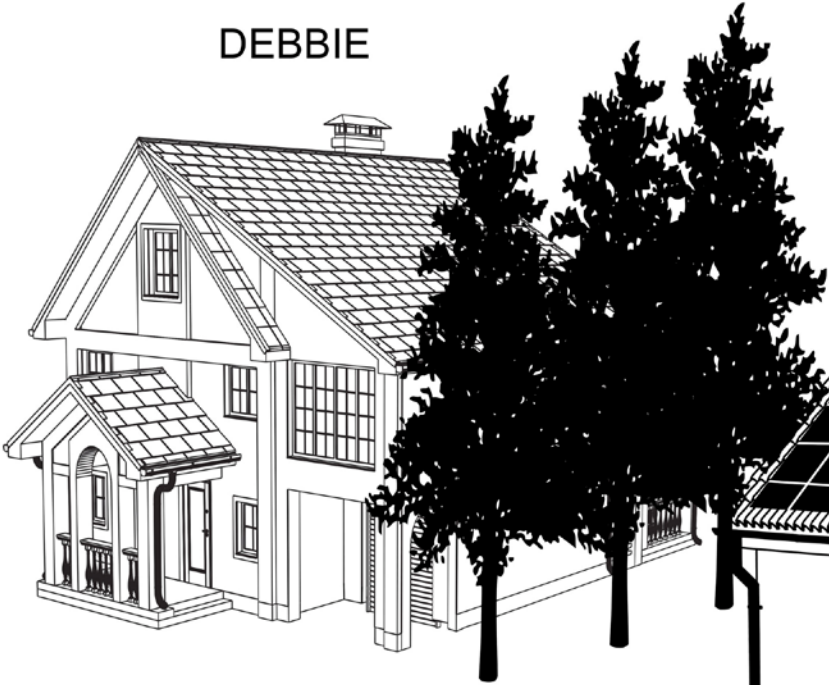


FIG. 166. RIGHT-OF-WAY

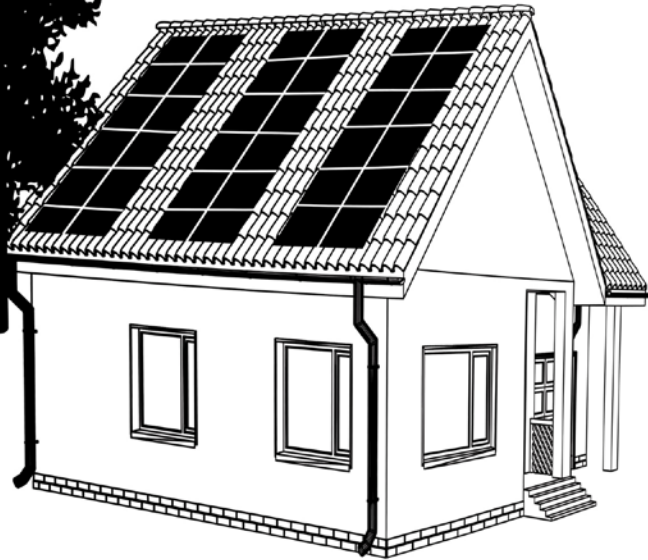
SCENARIO ONE



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

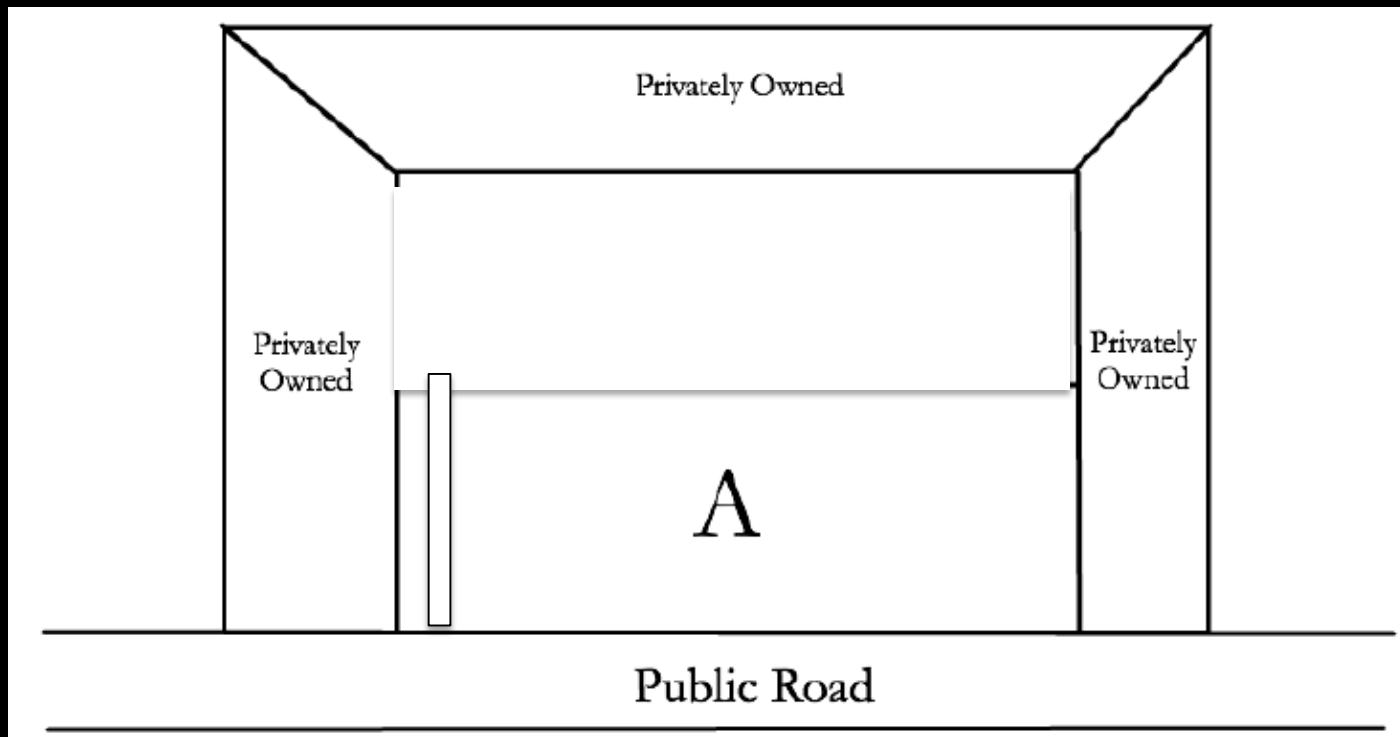
- Parcel sold to B “*subject to an easement for automobile parking during church hours for the benefit of the church on the property at the southwest corner of the intersection of Hilton Way and Francisco Boulevard . . . such easement to run with the land only so long as property for whose benefit the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

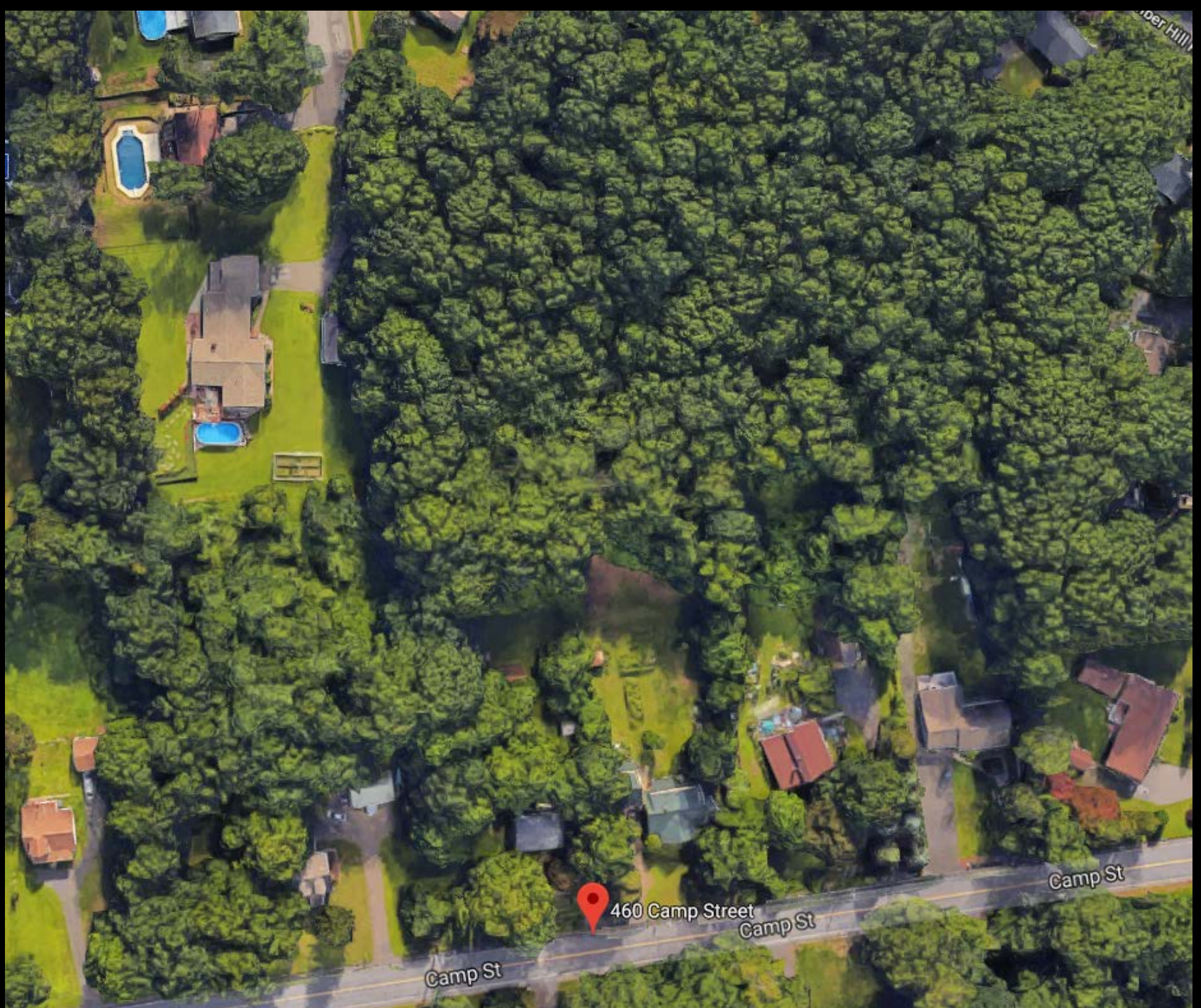
Implied Easement

- 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
- 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)







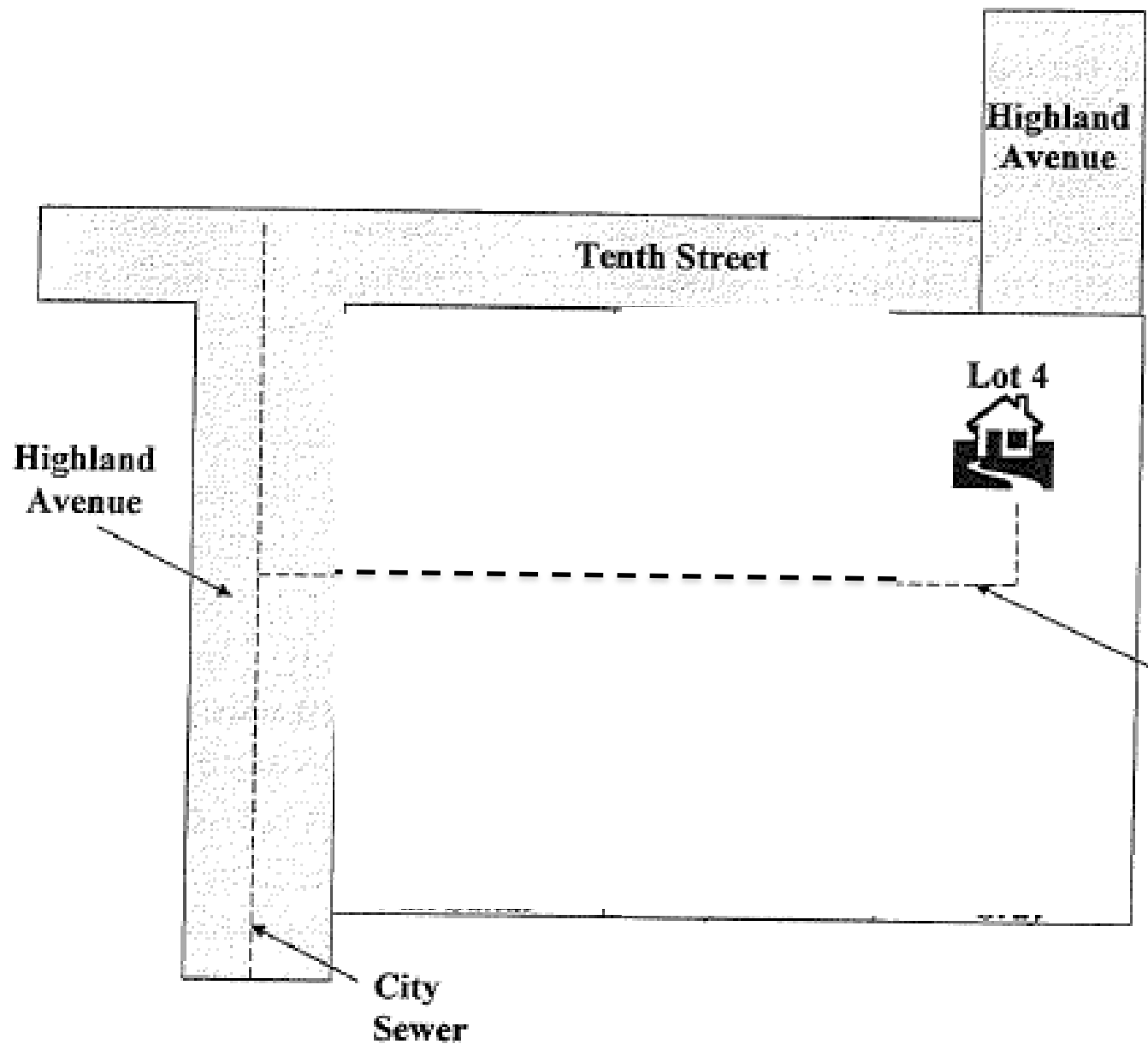
Thomas v. Primus

- 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



Felgenhauer v. Soni

- 1971 -- Felgenhauer (P) own front of lot; back owned by bank
- 1974 – P opens restaurant
 - Cross over bank parking lot for deliveries
- 1978 – P restaurant closes
- June 1982 – P reopens restaurant
- Nov 1984 – P sells property, keeps business
 - Enloe owns
- Jan 1988 -- Bank builds fence, agrees to put in gate for P
- 1998 – Soni (D) buys bank lot
- 1999 – D says plan to cut off use of parking lot

Felgenhauer v. Soni

- Easement by Prescription
 - Lost Grant Theory:
 - openly
 - continuously use land
 - without owner's consent
 - Based on adverse possession:
 - open and notorious use
 - hostile and adverse
 - continuous and uninterrupted
 - for statutory period
- Notice what is missing

Felgenhauer v. Soni

- Hostile and adverse
 - Do you need to expressly “claim [your] right”?
 - Just that owner has not expressly consented
 - No permission
 - What about gate?
 - Adverse possessor “must unfurl his flag on the land, and keep it flying”
 - But prescriptive easement prior to gate
- What about other requirements?
- How long does easement last?

Richardson v. Franc

- James and Lisa (P) traverse over 150-foot road on Greg and Terri's (D) land
 - Already written easement for “access and public utility purposes”
- P, for 20 years, landscaping, irrigation, and lighting
 - No objection
- D now object to use of road
 - Ask to remove landscaping, irrigation, and lighting
 - Say easement is expressly limited to access and public utility



Easements

- Benefit > Burden
- Ways to create an easement
 - Express/Writing
 - Implied – two types:
 - Necessity
 1. Initially commonly owned property (unity of ownership)
 2. Necessity
 3. Transaction that creates necessity
- Prior Use (Implication)
 1. Common ownership
 2. Before severance, prior use (*quasi-easement*)
 3. Reasonable necessity

Easements

- Ways to create an easement
 - Prescription
 1. open and notorious use
 2. hostile and adverse
 - without owner's consent
 3. continuous and uninterrupted
 4. for statutory period
 - Estoppel (irrevocable license)
 1. License
 2. Improvement
 3. Reliance
 4. Consent

Richardson v. Franc

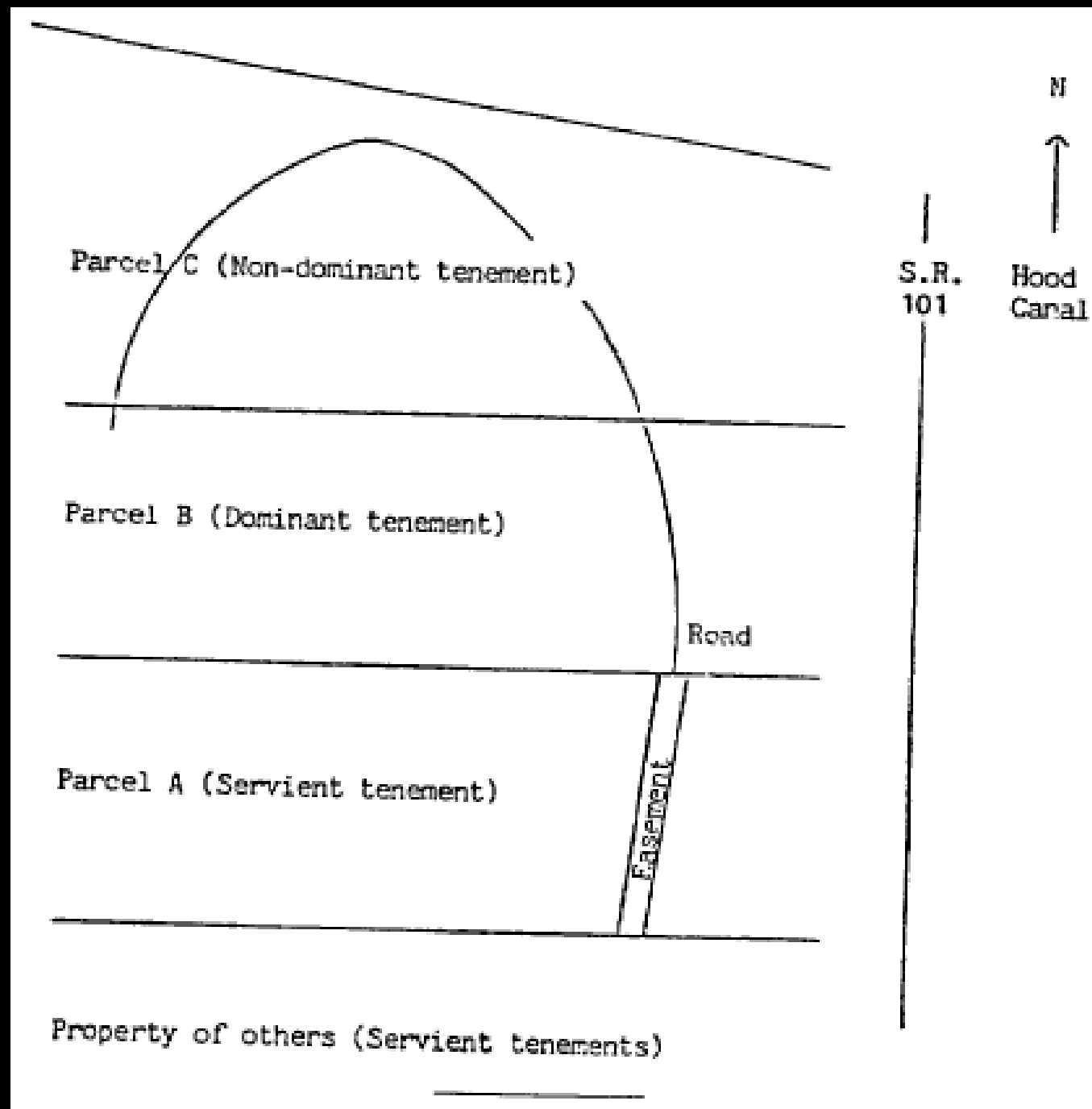
- License
 - Written or Oral?
 - Explicit or Implicit?
- Improvement
 - Of what?
 - Need reliance?
 - On what?
- Consent
 - Explicit or Implicit?
- How long should it last?
- Worry about the lack of a writing?
- Fair there is no payment?

Richardson v. Franc

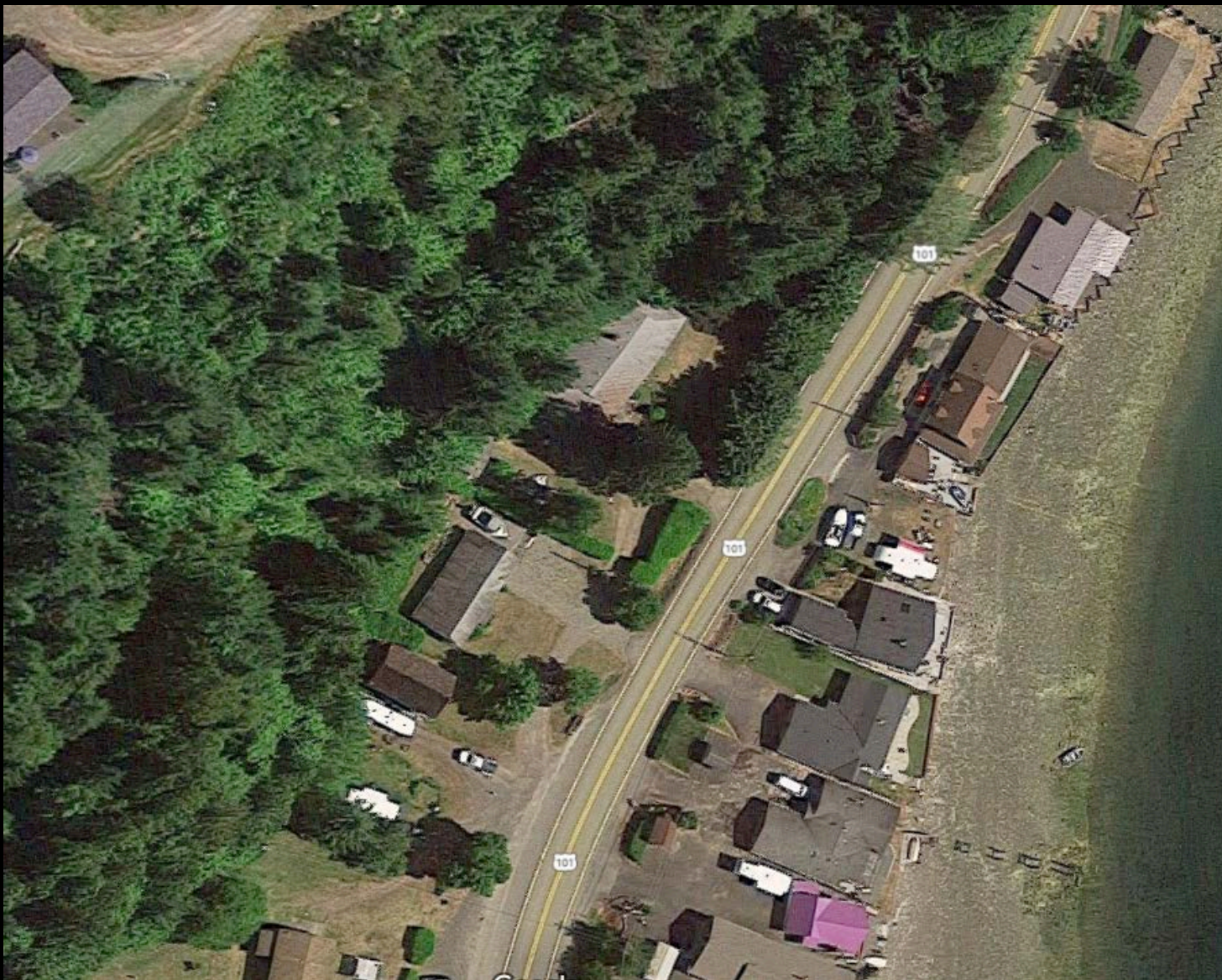
3. How well does *Richardson* track your intuitions about everyday behavior? Would you ask permission before engaging in the landscaping at issue here? Would you advise a client to? Suppose you asked your neighbor for an easement of way to enable you to build on an adjoining property? You're friends, and he says yes. But you know a thing or two about the law, so you know that if your relations turn sour you would have to rely on an irrevocable license claim. Would you push for a formal grant in writing? Is that a neighborly thing to do? For one view, *see* *Shepard v. Purvine*, 248 P.2d 352, 361-62 (Or. 1952) ("Under the circumstances, for plaintiffs to have insisted upon a deed would have been embarrassing; in effect, it would have been expressing a doubt as to their friend's integrity."). Does it make a difference that you know to ask? What about

Brown v. Voss

1952
easement
granted
across parcel
A for "ingress
to and egress
from" to
parcel B



Brown v. Voss



Brown v. Voss

- “If an easement is appurtenant to a particular parcel of land, any extension thereof to other parcels is a misuse of the easement”
- Remedy?
- Other options?

M.P.M. Builders, LLC v. Dwyer

- Dwyer purchased his parcel in 1941
 - “right of way along the cartway to Pine Street” across M.P.M.’s land
 - Describes location (three separate points)
 - No language on relocation
- M.P.M. offers to move
 - Allows easier construction
- Dwyer says no

M.P.M. Builders, LLC v. Dwyer



M.P.M. Builders, LLC v. Dwyer

- Allow normal use or development of the servient estate, but only if the changes do not
 - (a) significantly lessen the utility of the easement,
 - (b) increase the burdens on the owner of the easement in its use and enjoyment, or
 - (c) frustrate the purpose for which the easement was created
- Must be at whose expense?
- Must ask first?
- What if “no change” clause in original easement?
- Other options?

Suppose a railroad acquires the right to conduct rail service over a stretch of land. Decades pass, and the railroad seeks to abandon the line and turn the tracks over to a local government that will tear them out and create a system of nature trails. Can it? If

Transferring Easements

- B has right of way across A
- B breaks up into smaller parcels
- Does easement transfer?

- Easement *in gross* transfer?
 - Can divide into smaller?

Terminating Easements

- Easiest way?

Negative Easements

1. Against blocking windows
2. Interfering with air flowing to your land in a defined channel
3. Removing lateral support
4. Interfering with the flow of an artificial stream

Uniqueness of Conservation Easements

[Virginia Conservative Easement Act](#)

Covenants

- Abigail pays Beatrice \$1000 for Beatrice to promise use B property for residential purposes only
 - Why want property law?
 - Why not easements?
- Restrictive (Negative) v. Positive (Affirmative)
 - Restrictive – burdened promises to not act
 - Like a Negative Easement
 - Positive – burdened promises to act

Tulk v. Moxhay

- Tulk sells part of land to Elms
- *“that Elms, his heirs, and assigns should . . . keep and maintain the said piece of ground and square garden . . . in sufficient and proper repair . . . and that it should be lawful for the inhabitants of Leicester Square . . . on payment of reasonable rent for the same, to have keys at their expense and the privilege of admission”*
- Elms’s land eventually conveyed to Moxhay
- Type of servitude(s)?

Tulk v. Moxhay



Tulk v. Moxhay

- Tulk sells part of land to Elms
- *“that Elms, his heirs, and assigns should . . . keep and maintain the said piece of ground and square garden . . . in sufficient and proper repair . . . and that it should be lawful for the inhabitants of Leicester Square . . . on payment of reasonable rent for the same, to have keys at their expense and the privilege of admission”*
- Elms’s land eventually conveyed to Moxhay
- Court creates what?
- Why?
- Restraint on alienation?

Covenants

- Requirements under common law:
- Writing
- “Touch and Concern”
- Intent
- Horizontal Privity
 - privity of estate between original covenanting parties
- Vertical Privity
 - privity of estate between one of the covenanting parties and a successor in interest
- Notice

Neponsit Property Owners' Assocs. v. Emigrant Indus. Savings Bank

- 1917 – Neponsit conveys LOT to Deyer by deed containing following:
 - *“ . . . the heirs, successors and assigns . . . shall be subject to an annual charge . . . not, however exceeding in any year the sum of four (\$4.00) Dollars per lot 20x100 feet. . . . Such charge . . . shall be devoted to the maintenance of the roads, paths, parks, beach, sewers”*
- 1930 -- LOT sold to bank in judicial sale
 - Deed says subject to 1917 covenant
- Bank refuses to pay; Association is assignee of Realty

Neponsit Property Owners' Assocs. v. Emigrant Indus. Savings Bank



Touch and Concern Requirement

- English Rule:
 - Affirmative covenant DOES NOT T&C
 - Negative does T&C
- New Test Formulated in *Neponsit*:
 - “Does the covenant impose, on the one hand, a burden upon an interest in land, which on the other hand increases the value of a different interest in the same or related land?”
 - “[I]t still remains true that whether a particular covenant is sufficiently connected with the use of land to run with the land, must be in many cases a question of degree”

Touch and Concern Requirement

• 3rd Restatement – Servitude “is valid unless it is illegal or unconstitutional or [in violation of] public policy.” These include:

- (1) a servitude that is arbitrary, spiteful, or capricious;
- (2) a servitude that unreasonably burdens a fundamental constitutional right;
- (3) a servitude that imposes an unreasonable restraint on alienation . . . ;
- (4) a servitude that imposes an unreasonable restraint on trade or competition . . . ;
- and (5) a servitude that is unconscionable

Vertical Privity Requirement

- Neponsit Realty transferred enforcement to Neponsit Property Owner's Association
- What is the covenant enforcement problem?
 - Vertical Privity
 - In Gross Benefit
- How does court get around this?

3rd Restatement's Changes to Other Covenant Requirements

- No Horizontal Privity Required
- Exception to Writing Requirement
 - Imply from common scheme or plan
 - Implied reciprocal covenant

Common Scheme or Plan

- Developer owns 91 lots, conveys 10 of them with following language:
 - *No residence shall be erected upon said premises, which shall cost less than \$2,500 and nothing but residences shall be erected upon said premises. Said residences shall front Helene (now Collingwood) avenue and be placed no nearer than 20 feet from the front street line.*
- Then conveys lot A with no language
- In the end, of all conveyed:
 - 53 with express language, 38 without
- Lot A wants to open a gas station

Covenants -- *Summary*

	1 st Restatement	3 rd Restatement
Horizontal Privity	Required	None Required
Vertical Privity	Required	Flexible (<i>Neponsit</i>)
Writing/Notice	Writing	ImPLY Common Scheme
Intent	Needed	Needed
Touch & Concern	English Rule or <i>Neponsit</i>	Factors

Shelley v. Kramer



Shelley v. Kramer

- 30 of 39 houses on Labadie Avenue sign and record:
- *"... the said property is hereby restricted to the use and occupancy for the term of Fifty (50) years from this date, so that . . . hereafter no part of said property or any portion thereof shall be, for said term of Fifty-years, occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race."*

Shelley v. Kramer

- Shelley buys from Fitzgerald on Aug. 11, 1945
 - No actual knowledge
- Sue to prevent occupancy
- Holding?
- Why might want to do more than simply not enforce?
- Way to invalidate covenant?
 - HP?
 - Touch & Concern?
- What if Fitzgerald refused to sell the property to Shelley today?
 - [FHA](#)

Shelley v. Kramer

Oliver, who lives in Richmond, wants to give his land to his good friend Andy so that Andy can use the land during Andy's lifetime. Oliver then wants the land to go to his friend Betty's youngest girl, but only if Betty becomes a Buddhist. If Betty does not become a Buddhist, then Oliver would like his land to go to Tuckahoe Elementary School, but only for so long as Tuckahoe Elementary School meets the Virginia Board of Education Excellence standards.

Oliver tells you that Andy and Betty are alive. He also indicates that, thankfully, Tuckahoe Elementary School currently exceeds the Board of Education Excellence standards. Betty is currently not a Buddhist and she has no children.

You are Oliver's attorney. Please draft a grant that will dispose of Oliver's land in the way he desires. Explain to Oliver why you have chosen the language you have chosen.

El Di, Inc. v. Town of Bethany Beach



El Di, Inc. v. Town of Bethany Beach

“This covenant is made expressly subject to and upon the following conditions: viz; That no intoxicating liquors shall ever be sold on the said lot, that no other than dwelling or cottage shall be erected thereon and but one to each lot, which must be of full size according to the said plan ... a breach of which said conditions, or any of them, shall cause said lot to revert to and become again the property of the grantor, his heirs and assigns; and upon such breach of said conditions or restrictions, the same may be restrained or enjoined in equity by the grantor, his heirs or assigns, or by any co-lot owner in said plan or other party injured by such breach.”

El Di, Inc. v. Town of Bethany Beach

- Eli Di purchases Holiday House 1969
- Files for alcohol permit in 1981
- Prior to permit:
 - C-1 section of original 180 acres
 - 29 commercial buildings

El Di, Inc. v. Town of Bethany Beach



El Di, Inc. v. Town of Bethany Beach

- Eli Di purchases Holiday House 1969
- Files for alcohol permit in 1981
- Prior to permit:
 - C-1 section of original 180 acres
 - 29 commercial buildings
 - Can buy alcohol outside 180 acres

El Di, Inc. v. Town of Bethany Beach



El Di, Inc. v. Town of Bethany Beach

- First, enforceable covenant?
 - What type?
 - Writing?
 - Notice?
 - Horizontal Privity?
 - Vertical Privity?
 - Touch & Concern?

El Di, Inc. v. Town of Bethany Beach

- “A court will not enforce a restrictive covenant where a fundamental change has occurred in the intended character of the neighborhood that renders the benefits underlying imposition of the restriction incapable of enjoyment”
 - This just benefit > burden test?
 - Intent or value?
 - Difference from 3rd Restatement T&C Approach?

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRADFORD MANOR SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by **OAKBROOK COMMUNITIES, LLC**, a Georgia Limited Liability Company(hereinafter referred to as "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of certain real property lying and being in Land Lot 1 of the 2nd Land District of Gwinnett County, Georgia, being more particularly described as that parcel known as Bradford Manor Subdivision and being recorded in Plat Book 88, Page 151, Gwinnett County Records, which Plat is incorporated herein and made a part hereof by reference; and

WHEREAS, Declarant intends to develop on lands, including the real property described above, a development to be known as Bradford Manor Subdivision (hereinafter referred to as the "Development"); and

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined);

NOW, THEREFORE, the Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the real property, and be binding on all parties having any right, title or interest in the described property or any part thereof, and shall subject said parties to all limitations herein provided, and inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

COMMON PROPERTY

2.01 Conveyance of Common Property.

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration of Covenants, Conditions and Restrictions, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce or otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of Section 2.01, the Declarant may convey to the Association such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

2.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property in accordance with these Restrictions and subject to the rules and regulations which may be adopted by the Association, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section is subject to suspension by the Association as provided in Sections 2.03(c) and 3.06.

2.03 Rights of the Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the assignment, use, operation and maintenance of the Common Property;

(b) charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

(c) suspend, pursuant to Section 3.06, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(d) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority; to any quasi-public agency or to any utility company or cable television system;

(e) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;

(f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property including Common Property and revenues from assessments, user fees and other sources;

(g) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon the Association and such grantee, including a provision that such property or interest held by any such municipality or authority shall cease to be subject to this Declaration or all or any part of the Restrictions.

(h) to sell, lease or otherwise dispose of all or any part of its properties and interests therein; provided, however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (2/3) of each class of members.

**BYLAWS OF
FAITH HOLLOW HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I
NAME AND LOCATION**

The name of the Association is **FAITH HOLLOW HOMEOWNERS ASSOCIATION, INC.** (hereinafter referred to as the "Association"). The principal office of the Association (until otherwise designated by the Board of Directors of the Association (the "Board")) shall be located at P.O. Box 670, Loganville, Georgia 30052, and meetings of Members and directors may be held at such other places within the State of Georgia, as may be designated by the Board.

**ARTICLE II
DEFINITIONS**

Unless otherwise set forth herein, the terms used in these Bylaws shall have the same meanings ascribed to such terms as set forth in the Declaration of Covenants, Restrictions, and Easements for Faith Hollow dated as of September 23, 2005 (the "Declaration"), which has been executed by Hope Hollow Development, LLC with respect to a community known as FAITH HOLLOW, and is to be executed by duly authorized officers of the Association, and is to be filed for record in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia, as such Declaration may be amended from time to time, and which Declaration is incorporated herein by this reference.

**ARTICLE III
MEETINGS**

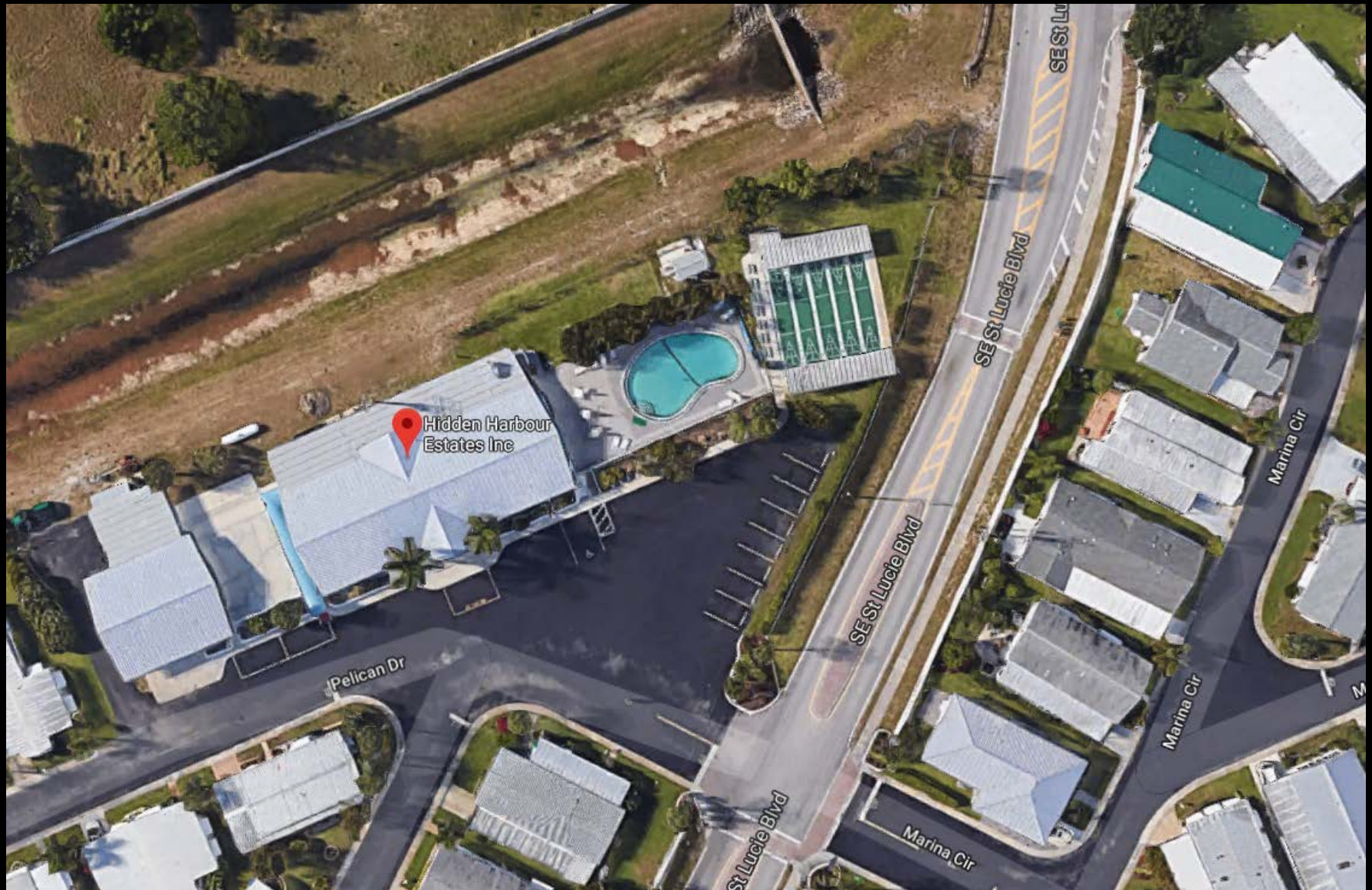
3.1 **Annual Meetings of Members:** The regular annual meeting of the Members shall be held not later than six (6) months past the end of the fiscal year of the Association, on a date (which is not a legal holiday) and at such place within the State of Georgia, as shall be designated in the call of meetings pursuant to Section 3.3 below. If no such date is designated, the annual meetings shall be held on the Second Tuesday in January, if not a legal holiday, and if a legal holiday, then the next business day succeeding. The Members shall, at such annual meeting, elect a Board for the ensuing year, in the manner provided in Article IV hereof, and shall have authority to transact any and all business which may be brought before such meeting.

3.2 **Special Meeting of Members:** Special meetings of Members shall be held at such place within the State of Georgia as shall be designated in the call of the meeting. Special meetings may be called by the President at any time and must be called by the President when so requested in writing by any two (2) Directors or by twenty-five (25%) percent of the Class A Membership.

Hidden Harbour Estates, Inc. v. Norman

- Declaration of Condominium, to operate a 202 unit Hidden Harbour
- Article 3.3(f) – association shall have the power “to make and amend reasonable rules and regulations respecting the use of the condominium property.”
- Common areas – including club house

Hidden Harbour Estates, Inc. v. Norman



Hidden Harbour Estates, Inc. v. Norman

- Association, by 126 to 63 vote, adopts rule prohibiting the use of alcoholic beverages in club house and adjacent areas
- Already has:
 - No sale may be effectuated without approval
 - No minors may be permanent residents
 - No pets allowed
- “no untoward incidents in the club house during social events”

Hidden Harbour Estates, Inc. v. Norman

- Reasonable?
 - Reasonable in light of what?
 - How high/low is the reasonable standard?
- Matter if original declaration of condominium v. promulgated by association after creation?
 - Original valid even if unreasonable unless they are illegal, unconstitutional, or against public policy
 - House rules and their enforcement are subject to a reasonableness standard

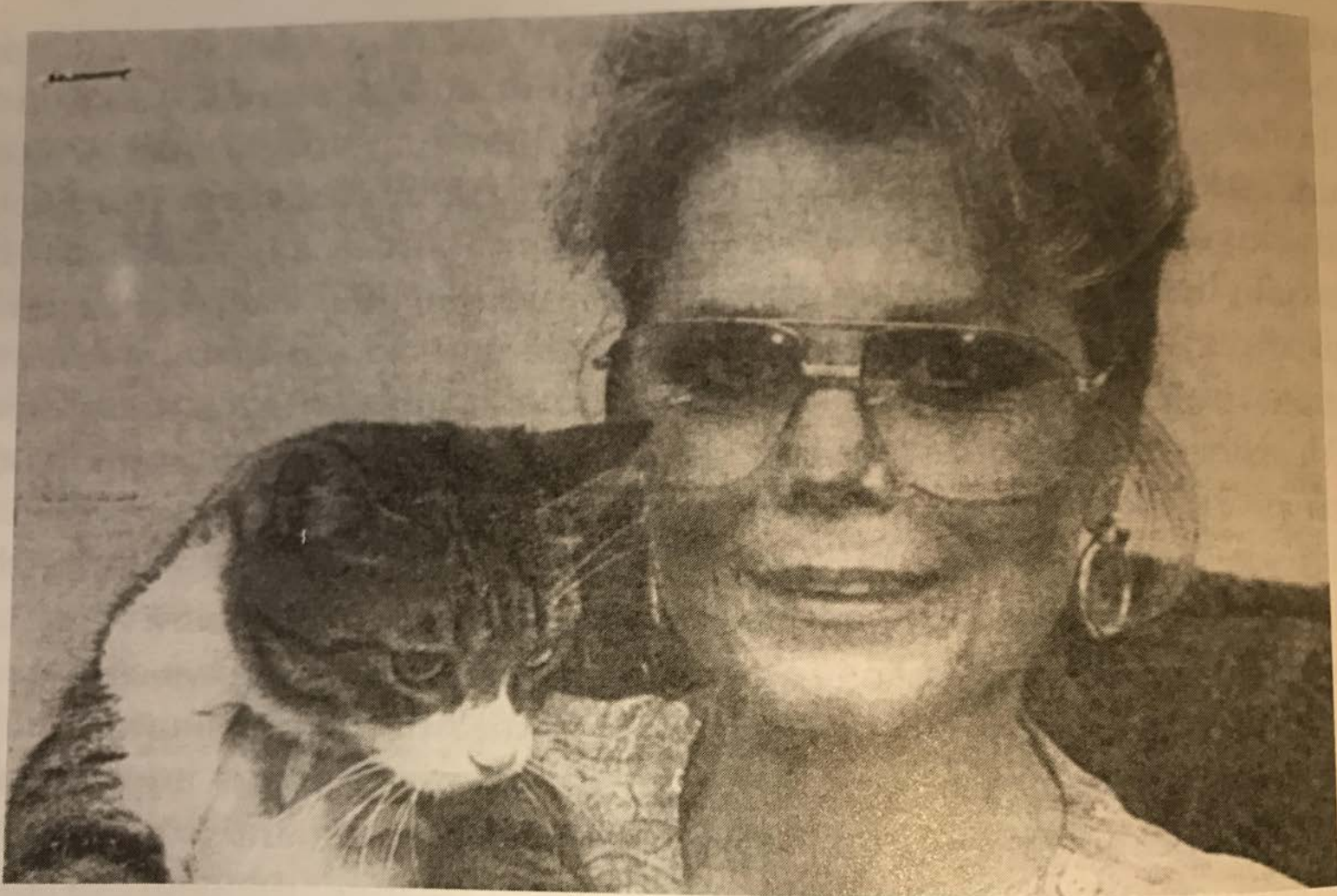
Nahrstedt v. Lakeside Village



Nahrstedt v. Lakeside Village

- 530 condo units subject to “covenants, conditions, and restrictions”
 - *“No animals (which shall mean dogs and cats), livestock, reptiles or poultry shall be kept in any unit.”*
 - *Permits “domestic fish and birds”*

Nahrstedt v. Lakeside Village



Natore Nahrstedt with Boo-Boo

Nahrstedt v. Lakeside Village

- 530 condo units subject to “covenants, conditions, and restrictions”
 - *“No animals (which shall mean dogs and cats), livestock, reptiles or poultry shall be kept in any unit.”*
- “enforceable equitable servitudes, unless unreasonable.” Cal. Civ. Code § 1354(a)
 - wholly arbitrary, violate a fundamental public policy, or impose a burden . . . Far outweighs any benefit
- presumption of validity
 - stability and predictability
- Touch and concern?

Nahrstedt v. Lakeside Village

- Worry about privatization of property law here?



Evan McKenzie

PRIVATOPIA

Homeowner Associations and the Rise
of Residential Private Government

40 West 67th Street v. Pullman

- 38 apartments in a cooperative
- What is a cooperative?
- Pullman buys apartment 1998
 - Comes with 80 shares in cooperative

40 West 67th Street v. Pullman



40 West 67th Street v. Pullman

- 38 apartments in a cooperative
- What is a cooperative?
- Pullman buys apartment 1998
 - Comes with 80 shares in cooperative
- Complains about retired college professor
 - running a loud and illegal bookbinding business in their apartment
 - toxic materials
 - “psychopath in our midst”
- Alterations to apartment without approval

40 West 67th Street v. Pullman

- Special meeting
- “if at any time the Lessor shall determine, upon the affirmative vote of the holders of record of at least two-thirds of that part of its capital stock which is then owned by Lessees under proprietary leases then in force, at a meeting of such stockholders duly called to take action on the subject, that because of objectionable conduct on the part of the Lessee, or of a person dwelling in or visiting the apartment, the tenancy of the Lessee is undesirable.”
- 2,048 shares to 0 – objectionable
- What do they want?

40 West 67th Street v. Pullman

- Business judgment rule
 - defer to a cooperative board's determination “[s]o long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith”
 - “best balances the individual and collective interests at stake”

40 West 67th Street v. Pullman

- 5 RPAPL 711(1):
- “A proceeding seeking to recover possession of real property by reason of the termination of the term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable, shall not be maintainable unless the landlord shall by competent evidence establish to the satisfaction of the court that the tenant is objectionable.”

40 West 67th Street v. Pullman

- Instances where decision gets no deference:
 - (1) outside the scope of its authority
 - (2) in a way that did not legitimately further the corporate purpose
 - Can test legitimacy of corporate purpose
 - (3) in bad faith
- Enough for a private entity to take a property interest?