

12-1-1953

## Municipal Corporations—Community Planning

Dewey Ertell Jr.

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [State and Local Government Law Commons](#)

---

### Recommended Citation

Dewey Ertell Jr., *Municipal Corporations—Community Planning*, 3 Buff. L. Rev. 128 (1953).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol3/iss1/51>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

*Community Planning*

In *City of Yonkers v. Rentways, Inc.*<sup>45</sup> the court merely recapitulated established law regarding non-conforming uses under zoning ordinances.<sup>46</sup> In the instant case, the defendant Rentways had constructed a two story building in a business zoned lot. Access to the second story of the building was gained over an adjoining, higher-level lot which was in a residential district. The court held that such use of the lot in the residential district was a non-residential use which the City could enjoin.<sup>47</sup> The City is not estopped<sup>48</sup> from enforcing the zoning laws either because Rentways had been issued a permit,<sup>49</sup> or by laches because the City has neglected to enforce the zoning laws for many years.<sup>50</sup>

XI. PROPERTY

A. *Real Property*

*Easements*

An easement is the limited use or enjoyment of an interest in land possessed by another.<sup>1</sup> To create an easement by prescription, there must be adverse use of the privilege or enjoyment with the knowledge of the person against whom it is claimed, or such an open, notorious, and uninterrupted use that knowledge will be presumed. This use must be exercised under a claim of right adverse to the owner and acquiesced in by him for a period equal at least to that prescribed by the statute of limitations for acquiring title to land by adverse possession.<sup>2</sup> While easements are regulated by the common law, adverse possession, on the other hand, is controlled by statute and is defined as the open and hostile possession of land, under claim of title to the exclusion of the true owner, which if continued for fifteen years,<sup>3</sup> ripens into actual title.<sup>4</sup>

45. 304 N. Y. 499, 109 N. E. 2d 597 (1952).

46. See 8 McQUILLAN, MUNICIPAL CORPORATIONS §§ 25.180 et seq. (3rd ed. 1949); 1 YOKLEY, ZONING LAW AND PRACTICE §§ 147 et seq. (2d ed. 1953).

47. *Village of Great Neck Estates v. Bernak & Lehman*, 223 App. Div. 853, 228 N. Y. Supp. 917 (2d Dep't), *aff'd*, 248 N. Y. 651, 162 N. E. 562 (1928).

48. See 8 McQUILLAN, *op. cit. supra*, note 46 § 25.153; 1 YOKLEY, *op. cit. supra* note 46 § 109.

49. *City of Buffalo v. Roadway Transit Co.*, 303 N. Y. 453, 463 104 N. E. 2d 96, 100 (1952).

50. *Village of North Pelham v. Ohliger*, 216 App. Div. 728, 214 N. Y. Supp. 253 (2d Dep't 1926), *aff'd*, 245 N. Y. 593, 157 N. E. 871 (1927).

1. 3 POWELL, REAL PROPERTY § 405 (Cum. Supp. 1952); 5 RESTATEMENT, PROPERTY § 450 (1944).

2. *J. C. Vereen & Sons v. Houser*, 123 Fla. 641, 167 So. 45 (1936).

3. C. P. A. § 34. Before 1932, the period required was 20 years.

4. *Scallon v. Manhattan Ry. Co.*, 185 N. Y. 359, 363, 78 N. E. 284, 285 (1906).