

A woman owned land that abutted a public highway to the south. A neighbor owned the land immediately to the north. The neighbor's predecessor had received an easement from the woman's predecessor in title to cross the woman's land for access to the public highway. This access was desired even though the neighbor and his predecessor had other access to public roads. The easement was in writing and properly recorded.

Recently, the woman erected a large solar collector on a portion of her land subject to the easement, even though the woman has other power resources. The location was essential to acquire the maximum sunlight. However, by erecting the collector there, the woman effectively cut off the neighbor's ability to use the easement. The local zoning code permits the use of solar collectors.

The neighbor immediately sued to compel the woman to remove the solar collector.

Must the solar collector be removed?

- A. No, because the neighbor has other means of access.
- B. No, because the zoning code permits the use of solar collectors.
- C. Yes, because the easement remains valid.
- D. Yes, because the woman has other power resources.

Explanation:

Distinctions between easements

Type	Appurtenant	Benefits easement holder's land Benefit & burden automatically transfer when land is conveyed
	In gross	Benefits easement holder personally Burden (not benefit) automatically transfers when land is conveyed
Purpose	Affirmative	Allows easement holder to do something on servient estate
	Negative	Restricts servient-estate owner's lawful use of servient estate
Creation	Express	Created by parties in writing that satisfies statute of frauds
	Irrevocable license	License becomes irrevocable due to estoppel or coupling with another servitude
	Implied	Implied by law due to necessity (easement by necessity) Implied by fact due to prior use (easement by implication)
	By prescription	Adversely acquired through OCAN —open/notorious, actual, continuous & nonpermissive use

Easements are either **appurtenant** (ie, **tied to the land**) OR in gross (ie, personal to the easement holder).^{*} An easement is appurtenant if it enhances the use and enjoyment of the dominant estate by allowing the easement holder to use the servient estate in a limited way (eg, a right-of-way across the servient estate—as seen here). Since this type of easement is tied to the land, the **benefit and burden** of the easement **rest with the current owners** of the **dominant and servient** estates, respectively.

Here, the neighbor's predecessor received an easement appurtenant from the woman's predecessor in title to cross her land for access to the public highway. That easement is tied to the land, so both the neighbor (current dominant-estate owner) and the woman (current servient-estate owner) are bound by it. And though the woman is free to **use** the valid easement in any way that does *not* unreasonably interfere with the neighbor's use, her solar collector effectively cut off his ability to use the easement. Therefore, the solar collector must be removed.

^{*}Easements are presumed to be appurtenant unless there are clear facts to the contrary (eg, if the easement is set to last for only a limited time).

(Choice A) The neighbor's ability to access his land from other public roads would defeat an *implied* **easement by necessity**. But it does not prevent him from enforcing the *express* easement granted to his predecessor.

(Choice B) Because the zoning ordinance permits solar collectors, the woman can lawfully use them on her land. But she cannot do so in a way that unreasonably interferes with the neighbor's use of the easement.

(Choice D) The fact that the woman has other power sources does not compel her to remove the solar collector. Instead, she must remove the solar collector because it violates the neighbor's ability to use the easement.

Educational objective:

An easement appurtenant is tied to the land, meaning that the benefit and burden of the easement rest with the current owners of the dominant and servient estates, respectively. And though the servient-estate owner is free to use the easement, he/she may not unreasonably interfere with the dominant-estate owner's use.

References

Restatement (Third) of Property: Servitudes § 4.5 (Am. Law Inst. 2000) (distinguishing easements appurtenant from easements in gross).

Restatement (Third) of Property: Servitudes § 4.9 (Am. Law Inst. 2000) (discussing limitations on servient-estate owner's use of easement).

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