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TINE v. ZONING BOARD OF APPEALS OF THE TOWN OF LEBANON AND PA 13-9 SUMMARY

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This report summarizes the Connecticut Supreme Court's decision in *Tine v. Zoning Board of Appeals of the Town of Lebanon, et al.* (308 Conn. 300 (2013)) and a related public act, [PA 13-9](#) (sHB 6481, *An Act Concerning Enforcement Protection for Nonconforming Structures*).

In *Tine*, the Connecticut Supreme Court held that a deck (including stairs) is not a building for purposes of the state law that sets a three-year statute of limitations on zoning enforcement actions for buildings that violate zoning regulations. Under that law, a building is deemed to be nonconforming, and thus permitted to remain as is, if it has been situated on a lot for at least three years in violation of setback or lot area requirements without the institution of an action to enforce the applicable regulation. The law does not define the term building.

[PA 13-9](#) requires local zoning officials to treat nonconforming structures (such as decks) as they treat nonconforming buildings under [CGS § 8-13a](#). The new law goes into effect on October 1, 2013.

TINE v. ZONING BOARD OF APPEALS OF THE TOWN OF LEBANON ***Background***

In this case, the Tines received a variance and zoning and building permits to build a house in violation of the setback requirements in § 5.2 of Lebanon's zoning regulations. The plans they submitted to the

municipal authorities did not include a deck. The house was completed in 2003, but in 2004 the Tines built a deck behind their house, in violation of setback requirements, without seeking the necessary permits. The deck was connected to the back of the house by French doors and a staircase. The exterior second-level French doors were part of the house when it was completed in 2003.

When the Tines sought certificates of zoning compliance and occupancy in 2008 in connection with the property's potential sale, a zoning enforcement officer discovered the deck. The town refused to grant a variance for the deck and issued a notice of violation and a cease and desist order. The Tines appealed to the Zoning Board of Appeals (ZBA) claiming that [CGS § 8-13a](#) barred enforcement of the setback regulations because the violation (i.e., deck) had existed for more than three years. When the ZBA denied their appeal, the Tines appealed to the trial court.

Proceedings Below

The trial court concluded that the deck was a building under [CGS § 8-13a](#) because it (1) was attached to the house and (2) provided a means of access to the house through doors that were part of the house's original construction. Therefore, it held that the cease and desist order was untimely. The ZBA appealed to the Appellate Court, but the Supreme Court took up the issue.

Issue on Appeal

The issue on appeal was whether a deck attached to a residential property is considered a "building" under [CGS § 8-13a](#). That answer would determine whether the three-year statute of limitations applied to the town's enforcement action.

Analysis and Holding

The Supreme Court exercises plenary review over matters of statutory interpretation. (In other words, it need not accord any deference to the trial court's interpretation of the statute.) By statute, it must begin the process of statutory interpretation by looking at "the text of the statute itself and its relationship to other statutes" ([CGS § 1-2z](#)).

In this case, the court noted that because the term building was not defined in the statute itself, “it is appropriate to look to the common understanding of the term as expressed in a dictionary” (*Tine* at 307, quoting *Urgin v. Cheshire*, 307 Conn. at 380). It concluded that “the dictionary definitions support a construction of the term ‘building’ as ... an edifice with walls and a roof” (*Tine* at 307). It further noted that the “legislature is aware that there is a difference between a building and other types of structures” and cited numerous examples of the distinction in Connecticut’s laws (*Tine* at 307). Because the deck had neither walls nor a roof, the court concluded that the *Tine*’s deck was not a building for purposes of [CGS § 8-13a](#).

The *Tines* also argued that the deck was entitled to protection under [CGS § 8-13a](#) because it was an integral and necessary part of their house and therefore included under the definition of building. The Supreme Court disagreed, noting that the deck was not included in the construction plans, as necessary elements of a house normally are. Not wanting to encourage people to contravene the law and then claim protection under [CGS § 8-13a](#), the court held that the deck was not integral to the house, and therefore, not eligible for protection under the law.

Holding. The court held that the *Tine*’s deck was neither a building for purposes of [CGS § 8-13a](#) nor integral to the house. Therefore, it reversed the trial court and remanded the case with instructions to affirm the decision of the ZBA.

PA 13-9

[PA 13-9](#) requires structures built in violation of zoning regulations to be deemed nonconforming under the same circumstances as buildings. This means a structure that violates setback requirements or sits on a lot in violation of minimum lot area requirements is a nonconforming structure if the applicable zoning regulations are not enforced within the first three years of the violation. A building or structure that attains nonconforming status may not be the subject of a municipal zoning enforcement action for violating these requirements.

The act allows towns to define “structure” in their zoning regulations. If not defined locally, the act defines “structure” as any combination of materials, other than a building, that is affixed to land. The definition includes decks, fences, patios, pools, signs, tennis courts, and walls.

The act places the burden of proving that a structure, but not a building, is nonconforming on the property owner. Under case law, the burden of proving a building is nonconforming is also on the property owner (*Friedson v. Westport*, 181 Conn. 230, 234-35 (1980)).

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