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===== Start of Answer #1 (1856 words) =====

Dear Client:

Thank you for contacting me and I'm happy to assist you with this matter. Ultimately, please be aware that I will need to acquire some additional information from you before I can fully proceed to counsel you further as to your rights, duties, and responsibilities, and as to any potential remedies that may be available to you regarding the matter of your home. That being said, I am more than happy to continue to provide you with a general guideline as to what I believe may be at issue here depending on your forthcoming responses. Also, this general legal guideline will be substantially informative as to your real property rights as to your home and the government's limitations as to laws which may affect your home.

Thus, before I begin to fully counsel you, if you could respond to me with some of the following information, it will substantially help me guide you further before I'm able to more accurately lay out your remedies and options at law with regards to the "problems" you are being told to correct by the government.

Firstly, I need to know what exactly the "problem" is that you are being told to correct regarding your home.

Why is this important? In some instances, the need to correct something as to your real property property can arise from a non-conforming use. Simply put, the government has, through the Constitution, certain police powers which permit states, municipalities, etc., to set forth the types of uses that properties may be put to through regulations and zoning efforts and the like. The government (i.e. municipalities), at times, has the ability to amend zoning plans and ordinances to update their general plan, special plans, and/or ordinances as is reasonably necessary to follow its general plan and continue to carry on business within a city/town. The general plan being that which the local government drafts every 20 years for purposes of regulating traffic, building as to residential areas and industrial areas, etc., and other matters as to the makeup of a city and where certain types of activities can occur within the city. Generally speaking, such matters are left to the municipalities are zoning is permissible, so long as it does not violate certain constitutional rights (which the law in question may depending on the issues you are dealing with).

Furthermore, at the time the local government amends and/or changes something in the general plan (which is usually permissible 4 times/year), certain properties may no longer conform to the new guidelines and/or ordinances/codes as to buildings, etc. These Amendments are made particularly as to

maps or text, which may either change particular zoning areas or change the language as to particular areas and/or the language in an ordinance. When such amendments cause changes, there may arise the non-conforming use--which is the possible case in your situation. While it's uncertain whether your situation arises from a non-conforming use, assuming it does, from what you've stated it would appear that you have been afforded until 2025 to cure the potential non-conforming use and make your property or properties conforming to the amended plan and/or ordinances.

Generally speaking, the period of time permitted to conform to the new/changed use is known as the amortization period. Here, such period is 12 years. As to whether or not this period is reasonable will also turn on the types of "problems" that you are being requested to change. If, for example, you are being requested to conform to something which requires minor changes, generally speaking a shorter length of time would be required to make your properties conforming. If the changes required are more burdensome (or strip the property of its value), more time would be required. In order to determine whether the time provided to cure the comfortably issues is sufficient, I will need to discuss with your further the types of problems you are having--assuming that non-comformity as to changes in zoning is indeed your problem.

Alternatively, depending on the changes being requested, there is the potential that the matter doesn't relate to a non-conforming use at all, but rather a matter of state and/or federal law. *Thus, I'll also need to know which laws the government is trying to enforce in order to further determine what rights you have and what remedies are available to you.* If, for example, the matter does relate to a state or federal law, there is the possibility that there is something on your property that the stated/feds are now trying to regulate. For example, if the matter relates to an environmental issue, hazardous waste, etc., Courts have held that the government has the same aforementioned police powers so that they may regulate the land use of private persons when it substantially relates to a legitimate government interest.

There are, however, limitations as to the governments' ability to regulate land usage and the like, and there are instances when such regulations may be considered a taking if the regulation goes too far and/or strips the property of all economic value. If you are being asked to make changes which will result in you being unable to put your property to a particular use, this is something I will need to obtain more information about to determine whether the potential regulation in question exceeds the government's power and interests. *Thus, to get to the bottom of this issue, I will also need greater detail from you as to any and all correspondence you have received, the types of problems the government has requested you cure, any information pertaining to the type of law/amendment sought to be enforced, and the like.*

Furthermore, to provide you with a greater understanding of such limitations as to the government's ability

to regulate land usage, this list includes meeting standards relating to the following: procedural due process; substantive due process; equal protection under the law; first amendment considerations; takings which go too far; etc. I can briefly touch on these limitations (but only briefly as the matter at hand in your situation may be completely unrelated from this potential issue).

Procedural due procs is your right granted through the 14th Amendment to various administrative proceedings which entitle you to be fairly heard with regards to this matter and the like. Thus, again, receiving copies of any and all documentations you have received is very important in determining whether or not this may be an issue.

Substantive due process, on the other hand, is your right through the 14th Amendment to ensure that any such potential usage regulations rationally relate to a legitimate government interest, and do not extend beyond that so as to burden you or create a deprivation of the use as to what your property can be used for to be considered a taking under the Takings Clause by the government. There is the potential, albeit slim, that such a request to correct something relating to the law in question may deprive you of all economic value that your property may bear. If that is the case, you are entitled to file an inverse condemnation action against the government in an attempt to show that the law in question is a taking of your property. If you make a showing of a taking, you would then be entitled to just compensation (the reasonable value of your property at the time) from the government. Hopefully, such is not the case here, but I will need further information to determine whether or not this is a potential issue.

Equal protection under the law is something further set forth under the 14th Amendment which guarantees that you, and all other citizens, are entitled to equal protection under the law. Essentially, this means that if the law in question targets a particular class/group of people, there is the potential that it is unconstitutional. Courts have determined, thus far, that there are various protected classes known as "suspect" classes in which any law that appears to unfairly target a group within such classes is presumably wrongful. These classes include laws which relate to gender, age, national origin, race, etc. Then, there are quasi-suspect classes in which a less strict approach is taken as to whether or not the law may violate equal protection--which Courts have upheld to include regulation of where those with special needs may or may not reside.

Lastly, the other possible consideration is that the law in question may relate to your free speech rights under the 1st Amendment. Generally speaking, laws may not stay you from exercising protected free speech in any form. For example, if you are being requested to take down political signs, Courts have considered this Constitutionally protected free speech for which the government may not diminish in scope or value.

Please note that for all intents and purposes, these constitutional limitations on the government's abilities to regulate land usage also apply to the local government's ability to zone, enact and/or amend local ordinances, etc. Thus, the problems you are dealing with may not necessarily relate to a mere non-conforming use, but rather a new ordinance which requires or places on you a certain burden which you are being forced to correct within a certain amount of time. Again, in order to determine whether a violation has occurred as to a ordinance that has gone too far and infringes upon your rights, I will need to obtain more information. Please note that Courts have generally held, however, that such laws must rationally relate to legitimate government interests to be enforceable. In order to determine whether this is an issue, I will need to thoroughly examine the law in question, as well as all correspondence you have received, etc.

Again, depending on what exactly you are dealing with here will help as determine whether or not there have been or will be a violation of such constitutional rights as they relate to your properties and the law(s) attempted to be enforced in question.

I hope the information above is both legally informative and helpful as we start to get to the bottom of the problems you are facing as to your home. Obtaining a rough outline of your constitutionally protected property rights and understanding the extent of which the government can affect/alter such rights through its police powers is extraordinarily important when you are confronted with such matters. And, while I have only provided you with a brief outline of such matters, all of them are extremely important, as I understand protecting your home is of the utmost importance. Furthermore, as I'm sure you know, working against the government can be difficult and intimidating, but rest assured I'm here to help protect both you and your home. If you could, I encourage you to contact my legal assistant about setting up a time in which we can get together to further discuss the problems you are facing. At that time, I will gladly help you get to the bottom of what has changed, and what right, if any, the government has to require you to correct problems with your property. Thank you.

Sincerely,

Your attorney

==== End of Answer #1 =====

Adverse Possession -

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===== End of Answer #1 =====

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===== Start of Answer #2 (1660 words) =====

Bill has several issues that need to be addressed. The first is based on the quitclaim deed could there have been an easement prior to the ownership of John Smith and Bill? The second is does Bill have a non-possessory interest entitling him to the use or

enjoyment of John Smiths land? Does this sewer line run with the benefited land and burdened land? The third issue for Bill is meeting the 10,000 square foot minimum for a septic field, he will need to look at zoning, variances, area exceptions and what constitutional exactions may help him accomplish this. Bill's fourth issue is how to deal with the discriminatory intent rather than the discriminatory effect of the sign. What constitutional rights does Bill have versus what constitutional rights does John Smith have?

A deed is a way to transfer title from one party to another. There are several requirements. It must list the names, it must have a description, it must have words of grant, include the interest of the parties and be signed by the grantor. There are three types, quitclaim, general warranty, statutory special deed. Fortunately for Bill the quitclaim deed John Smith has is the worst type of deed. In this deed the grantor could have possibly conveyed the property to someone else and the grantor is not saying the land has marketable title free from adverse possession, encumbrances or zoning restrictions. There very well could have been an easement prior to John and Bills ownership so we must look to see if these exist with the land.

Since Bill said he was not aware of his sewer access to be on John Smiths property he should search various sources. First he should look at the deed to see if it was there. Next he should look through the appropriate recording systems, depending on where he is it could be the grantor index which starts with the government patent(root of title) then proceeds chronologically through the grantors and grantees. Then there is the grantee index which is usually used first to locate the identities of the grantors and grantees moving backwards to the root of the title. There is also the tract index which typically is not used anymore but may have been used in 1981. If none of these work you can contact a title company to have them look at their title plant to see if that would be valuable.

Next Bill could seek out title assurance to verify if in the past there was an encumbrance on John Smiths property granting himself the right to tie into the sewer

main. Title assurance can be achieved several ways. First they are covenants of title (seisin, right to convey, against encumbrances, further assurances, warranty and quiet enjoyment). There are opinions and abstracts which are legal opinions of an attorney verifying through searching that what is seen is accurate. There are insurance policies today which are derived from ATLA and they are pretty standard and they cover 4 risks: if the title is held by another, if the title is unmarketable, if the insured has no access and against encumbrances. The title insurance policy shows that as of the date there the title is free and they will defend the insured.

A servitude is a non-possessory interest in another's property. An easement is a non-possessory interest that entitles a holder to use and enjoyment of another property. It can be affirmative or negative. Affirmative give a party an interest on another's land. Negative easement restricts a party from doing something. Easement appurtenant deals with two parcels one is the dominant and one is the servient landowner. Here would be an example of Bill being the dominant landowner and John Smith being the servient landowner. Bill is benefitted and John Smith is burdened. There are four ways to create an easement these are by prescription also known as adverse possession. The next is by implication, implied by law based on previous apparent use and intent to survive division. The next is necessity. Here Bill's only location is to tie into John Smith's sewer line. If he can get the area variance approved and meet the minimum requirement then an easement by necessity would be met. The last way would be to grant an easement expressed in writing signed by the grantor. Most likely if Bill can get the variance approved then he is likely to get the easement by necessity. There are several ways to terminate an easement, necessity, estoppel, writing, merger, abandonment and prescription.

Depending on what Bill wants to do if he seeks damages he will look to a covenant if he seeks injunction he will look to equitable servitude.

A covenant is a promise to do or not do something. They are expressed or implied.

They are personal or real. They are affirmative or negative. It is a real covenant if it runs with the land and binds the successors. If the original parties intended for a benefit and a burden to run with the land then they need to show several key elements. Starting with a burden to run with the land we must look to see if there is a writing, then we must look at the intent of the parties, next we look to see if it touches and concerns the land, next it needs to meet horizontal privity and vertical privity and lastly it needs notice of the original covenant. For a benefit to run we must show there is a writing, that the intent is present, that it touched and concerned both parties and that there was vertical privity.

Zoning is derived from the 10th amendment granting the state the powers of the government to create their own governing rules. This is typically how it will go. It starts at the top, the constitution. Then California will weigh in above the general plan for specific state legitimate issues such as wind energy. Then comes the general plan which is a long range plan for urban development it can be changed 4 times a year. Next is the specific plan which is a tool for implementing the general plan. Under this we have ordinances which control the day to day rules. Next is conditional use which means a party may be granted permission to use a property in a certain way although it may not be for that purpose. If these arise a party may exercise his rights of procedural due process. Variances are also under zoning with is the best way to achieve flexibility. These can be either area or use, areas allow problems of ill fit, such as height restrictions. Use variance deals with allowable use in an area zoned against that use for example commercial building in a zoned area for residential. If a party is found to be non-conforming which means that the zoning of the area has changed then the agency must regulate in time not all at once because if they do it all once the party is entitled to just compensation.

Bill should try to submit to the local zoning board for an area variance because he wants to be allowed to maintain a septic field on his property. He needs 200 square feet. Typically these can be granted if Bill can show undue hardship and it won't affect

the value of his neighbors. If he is denied he has procedural due process safeguards via a hearing, impartial tribunal or explanations.

There are several protections you may engage in under the 14th amendment. These fall into 3 categories; equal protection clause, substantial due process and procedural due process. Under the equal protection clause not citizen shall be denied protection under the laws of the US. This arises if the state objection fails to rationally relate to the state permissible objective. If it does they you may be protected under the laws. If the rational relation test meets the state objectives then the last ditch effort would be under the strict scrutiny test. It encompass two areas, suspect classification and fundamental interest. Under suspect it looks at issues of gender, race, religion, etc. Under fundamental interest is goes back to the permissible objective. If these are triggered at all the state has the burden to show that it is in alignment with there state objective. If it is a zoning issue if it further there goal of reaching that objective then it will not violate equal protection.

Bill needs to look at Johns 1st amendment rights to free speech with the sign on his lawn but John will have the safeguards. Although John ahs these safeguards he is in violation of the building departments rules and regulations. John may be able to leave the sign up because only have political signs is a violation of substantive due process. John is an property owner and he has a right to put up anything he wants unless it is violation with a goal of the zoning in the area to further state permissible objectives. General welfare may be one, Aesthics is now allowed, safety is also a reason to prevent an owner from putting up signs for other reasons. (Time)

Procedural due process is when a specific conditional use or variance issue comes up that is administrative only rather than legislative it gives the parties involved even neighbors the right to a hearing, impartial tribunal and explanation of decision. See

