

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral by Westport Registrars of Voters

File No. 2013-100

FINDINGS AND CONCLUSIONS

The Westport Registrars of Voters referred this matter pursuant to Connecticut General Statutes § 9-7b (a) (3) (E) and request that the Commission make a determination whether Respondents Stacy W. Bass and Howard K. Bass, registered voters in the Town of Westport, are bona fide residents in Westport, as although their property is partially located within Westport, the dwelling unit is substantially located within the City of Norwalk.

After an investigation of the Referral, the Commission makes the following findings and conclusions:

1. Respondents have been registered voters in Westport at an address on Covlee Drive since 2000 and have lived in the town since approximately 1996.
2. Respondent Stacy W. Bass and Howard K. Bass voted from the Westport address 15 and 9 times, respectively, from 2000 through the present.
3. Subsequent to a town wide review of properties along the Westport border, the Westport Registrars of Voters Office reviewed the Covlee Drive property and determined that roughly 10% of the property is located in Westport, including but not limited to the mailbox and potentially a small portion of the house itself.
4. In their submission to the Commission, the Referring officials do not question whether the Respondents' attachments to the Town of Westport are legitimate, significant, and continuing nor that the Respondents actually live and reside at the property and otherwise qualify by virtue of their age and citizenship. Rather, they question whether the geographic location of the Respondents' home qualifies them to vote in Westport.
5. In response, the Respondents submitted a certified survey of the Covlee Drive property prepared in 2008 by Laferriere Associates, a licensed professional land surveyor.¹ That

¹ Though not at issue here, the Respondents also submitted statements asserting that their attachments to the Town of Westport for the past 18 years have been significant, including, but not limited to paying taxes in Westport, receiving municipal services from Westport and sending their children to the Westport public schools. They assert that Westport is the main focus of their residential life and has been for the past 18 years.

survey identifies the Westport-Norwalk line as nearly vertically cutting across the eastern edge of the property, with the vast majority of the house itself falling into Norwalk.

6. However, the survey shows that approximately 1-3% of the house falls over the Westport border, including the walls of two upstairs rooms identified as bedrooms thereon.
7. An elector is eligible to register and vote in a particular town only if such voter is a bona fide resident of such town. General Statutes § 9-12 sets forth elector qualifications and provides in pertinent part:

(a) Each citizen of the United States who has attained the age of eighteen years, and who is a bona fide resident of the town to which the citizen applies for admission as an elector shall, on approval by the registrars of voters or town clerk of the town of residence of such citizen, as prescribed by law, be an elector, except as provided in subsection (b) of this section. For purposes of this section a person shall be deemed to have attained the age of eighteen years on the day of the person's eighteenth birthday *and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person's dwelling unit is located within the geographic boundaries of such town.* No mentally incompetent person shall be admitted as an elector. . . . (Emphasis added.)

8. In addition to the statutory prongs of age, citizenship and geographic location identified above, an individual's bona fide residence must qualify as the place where that individual maintains a true, fixed, and principal home to which he or she, whenever transiently relocated, has a genuine intent to return. See, e.g., *Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-077; *In the Matter of a Complaint by Gary Amato, North Haven*, File No. 2009-158 (2010); *In the Matter of a Complaint by Cicero Booker, Waterbury*, File No. 2007-157. In other words, "bona fide residence" is generally synonymous with domicile. *Id.*; cf. *Hackett v. The City of New Haven*, 103 Conn. 157 (1925). The Commission has concluded, however, that "[t]he traditional rigid notion of 'domicile' has . . . given way somewhat but only to the extent that it has become an impractical standard for the purposes of determining voting residence (i.e., with respect to college students, the homeless, and individuals with multiple dwellings)." (Emphasis added.) *In the Matter of a Complaint by James Cropsey, Tilton, New Hampshire*, File No. 2008-047 (Emphasis added.). See also *Wit v. Berman*, 306 F.3d 1256, 1262 (2d Cir. 2002) (stating that under certain circumstances the domicile rule for voting residency can give rise to administrative difficulties which has led to a pragmatic application of that rule in New York); *Sims v. Vernon*, Superior Court, Fairfield County, No. 168024 (Dec. 22, 1977) (concluding that an absentee ballot of an individual should be counted as that individual

was a bona fide resident of the town in which the ballot was cast.); *Farley v. Louzitis*, Superior Court, New London County, No. 41032 (Oct. 4, 1972) (considering issue of voter residency with respect to college students and stating that “a student, *and a nonstudent as well*, who satisfies the . . . residence requirement, may vote where he resides, without regard to the duration of his anticipated stay or the existence of another residence elsewhere. It is for him alone to say whether his voting interests at the residence he selects exceed his voting interests elsewhere.”) (Emphasis added.)

9. The Commission has previously concluded that “[a]n individual does not, therefore, have to intend to remain at a residence for an indefinite period for that residence to qualify as that individual’s bona fide residence.” *Referral by Manchester Registrars of Voters*, Manchester, File No. 2013-091; (quoting *In the Matter of a Complaint by James Cropsey, Tilton, New Hampshire*, File No. 2008-047). Rather, the individual only has to possess a present intention to remain at that residence. *Id.*; see also *Maksym v. Board of Election Com'rs of City of Chicago*, Illinois Supreme Court, Docket No. 111773 (January 27, 2011), 2011 WL 242421 at *8 (“[O]nce residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has established residence, he or she can be physically absent from that residence for months or even years without having abandoned it. . . .”)
10. As such, where an individual truly maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can choose either one of those residences to be their bona fide residence for the purposes of election law so long as they possess the requisite intent. *In the Matter of a Complaint by Ralph Arena, Hartford*, 2012-030; *In the Matter of a Complaint by Anne Cushman Schwaikert, et al, Woodbury*, File No. 2011-005; *Cropsey*, File No. 2008-047, *supra*; see also *Wit*, 306 F.3d at 1262 (quoting *People v. O’Hara*, 96 N.Y.2d 378, 385 (2001) for this principle.)
11. In the present case, as noted above, no one contests that the Respondents maintain legitimate, significant, and continuing attachments to the Town of Westport, or that they are citizens of the United States and have attained the age of eighteen years.
12. As such, the question to answer here is only whether the location of the Respondents’ property meets the geographic location prong of General Statutes § 9-12.
13. Public Act 07-194 of the 2007 Public Acts added the language “and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person's dwelling unit is located within the geographic boundaries of such town.”

14. The above language was added subsequent to the Commission's final determination in *In the Matter of an Appeal of Gerald J. Porricelli and Marianne Porricelli against the Board for Admission of Electors and Registrars of the Town of Greenwich*, File No. 2007-154.
15. In *Porricelli*, the appellants, electors in Greenwich, owned a single-family home located on property within both the Town of Greenwich and the City of Stamford. However, the entire house in which they resided was located within the City of Stamford and only a portion of the driveway, including street frontage, was located in Greenwich. The electors had a Greenwich postal address and considered themselves residents of Greenwich for all purposes, including voting.
16. The Commission in *Porricelli* recognized that the legislature had not codified a geographic location standard at the time and as such, looking to the common law in the area of domicile for tax purposes, the Commission determined that the location of an individual's dwelling unit determines where that person is permitted to claim bona fide residence.
17. The Respondents in *Porricelli* appealed the Commission's decision to the Superior Court, but during the pendency of that case, "the state legislature approved Public Act No. 07-194, effective on July 5, 2007, [and] amended General Statutes § 9-12 in a manner consistent with the SEEC decision." *Porricelli v. State Elections Enforcement Comm'n*, Superior Court, judicial district of New Britain, Docket No. CV074015031S (June 13, 2008), 2008 WL 2745091 (Conn. Super. Ct.)
18. The court in *Porricelli*, granted the Motion to Strike by defendants the Greenwich Registrars of Voters and the Board of Admission of Electors of Greenwich, as well as the Motion to Dismiss by defendant SEEC on the grounds that the amendment to General Statutes § 9-12 now definitively addressed the topic of geographic location for bona fide residence purposes, rendering the questions in the case moot and leaving the court without the ability to grant the Appellants the relief they sought. *Id.* at *3-5.
19. The geographic location prong added in Public Act No. 07-194 was applied recently in *In re: Referral by Westport Registrars of Voters*, File No. 2013-102, in which the postal address and a portion of the property was located within the Town of Westport, but the actual dwelling unit, a single-family home, was entirely located within the geographic boundaries of the Town of Weston. The Commission determined in that case that because the dwelling unit was located entirely in Weston, the Respondent was indeed a bona fide resident of Weston and not the town through which she received her postal mail.
20. The geographic location prong was first applied by the Commission in *In the Matter of a Complaint by Edward Cook, Essex*, File No. 2010-073, in which the postal address and a portion of the property was located within the Essex village of Ivoryton, but the actual

dwelling units, dormitory-style employee housing at an overnight camp, were entirely located within the boundaries of the Town of Deep River. The Commission determined in that case that because the dwelling units were located entirely in Deep River, the Respondents were indeed bona fide residents of Deep River and not the town through which the Respondents received their postal mail

21. However, this case presents a limited and uncommon question of first impression here as, unlike in *Westport Registrar of Voters*, File No. 2013-102 and *Cook*, File No. 2010-073, the structure in which the Respondents live is only partially located within the town in which they wish to qualify as bona fide residents—a very small portion, at that.
22. Because the Commission’s resolution of this matter requires the application of the aforementioned statutory provision to a particular factual scenario, the Commission’s review is guided by well-established principles of statutory interpretation, the fundamental objective of which is to ascertain and give effect to the apparent intent of the legislature. *Picco v. Town of Voluntown*, 295 Conn. 141, 147 (2010).
23. “In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning . . . [General Statutes] § 1-2z² directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretative guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . .” (Internal quotation marks omitted.) *State v. Drupals*, 306 Conn. 149, 159 (2012); see also *Francis v. Fonfara*, 303 Conn. 292, 297 (2012).
24. The relevant text of General Statutes § 9-12 is as follows: “a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector *if such person's dwelling unit is located within the geographic boundaries of such town.*” (Emphasis added.)

² General Statutes § 1-2z reads: “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”

25. [S]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant. . . ." (Internal quotation marks omitted.) *Housatonic Railroad Co. v. Commissioner of Revenue Services*, 301 Conn. 268, 303 (2011).
26. The first question to consider is what the legislature meant by "dwelling unit," as that term is not defined within the statute. Moreover, that term is not defined anywhere in Title 9.
27. "Such silence does not, however, necessarily equate to ambiguity Rather, the test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." *Mayfield v. Goshen Volunteer Fire Co., Inc.*, 301 Conn. 739, 745 (2011) (citation omitted; internal quotation marks omitted). See also *Harris Data Communications, Inc. v. Heffernan*, 183 Conn. 194, 198 (1981) ("[Statutory language] does not become ambiguous merely because the parties contend for differing meanings."); *Szczapa v. United Parcel Service, Inc.*, 56 Conn. App. 325, 330 (2000) ("[I]n construing the meaning of a statute, courts do not torture words to import ambiguity where the ordinary meaning leaves no room for it.")
28. "Dwelling unit" is a term of art that is defined elsewhere in the General Statutes. "[I]t is an elementary rule of statutory construction that we must read the legislative scheme as a whole in order to give effect to and harmonize all of the parts. . . . When statutes relate to the same subject matter, they must be read together and specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling." *Langello v. West Haven Bd. of Educ.*, 142 Conn. App. 248, 258 (2013) (citation omitted; internal quotation marks omitted).
29. Title 47a, which concerns landlord and tenant law, defines "dwelling unit" as follows, in General Statutes § 47a-1 (c), in relevant part:
- As used in this chapter and sections 47a-21, 47a-23 to 47a-23c, inclusive, 47a-26a to 47a-26g, inclusive, 47a-35 to 47a-35b, inclusive, 47a-41a, 47a-43 and 47a-46:
- . . .
- (c) "Dwelling unit" means any house or building, or portion thereof, which is occupied, is designed to be occupied, or is rented, leased or hired out to be occupied, as a home or residence of one or more persons. . . .
30. Title 7, which concerns municipal corporations, adopted the definition of "dwelling unit" in § 47a-1, as follows:

As used in sections 7-148ff, 7-148ii, 7-152c, 19a-206, 47a-52, 47a-53, 47a-58 and 49-73b:

...
(3) "Dwelling unit" means any house or building, or portion thereof, which is occupied, designed to be occupied, or rented, leased or hired out to be occupied, exclusively as a home or residence of one or more persons.

31. The term is defined again in Title 47a, in General Statutes § 47a-50 (3), as follows:

(3) A "dwelling unit" or an "apartment" means any house or building, or portion thereof, which is rented, leased or hired out to be occupied, or is occupied as a home or residence of one or more persons;

32. Title 8, concerning zoning, planning, housing and economic and community development, utilizes the term "dwelling unit" throughout the title consistent with the above definitions. See, e.g., General Statutes §§ 8-2g, 8-3, 8-3g, 8-13m, 8-13n, 8-26g, 8-30g, 8-37ll, 8-39, 8-42, 8-68e, 8-68h, 8-71, 8-73, 8-76, 8-116b, and 8-119x.

33. Considering the term "dwelling unit" in its legislative context, it is clear to the Commission that the term "dwelling unit" should be afforded the same meaning and usage as that assigned in the above statutes.

34. Turning to the facts of the case, the "dwelling unit" in this instance then is the house in which the Respondents live.

35. Next we consider the term "within," which also lacks a statutory definition, but is a common term. "In the absence of a statutory definition, words and phrases in a particular statute are to be construed according to their common usage. . . . To ascertain that usage, we look to the dictionary definition of the term." (Internal quotation marks omitted.) *Chatterjee v. Comm'r of Revenue Services*, 277 Conn. 681, 690 (2006).

36. The 2013 Random House Dictionary³ defines "within" as:

Within

adverb

1. in or into the interior or inner part; inside.

³ within. Dictionary.com. Dictionary.com Unabridged. Random House, Inc. <http://dictionary.reference.com/browse/within> (accessed: January 03, 2014).

2. in or into a house, building, etc.; indoors: *The fire was burning on the hearth within.*
3. on, or as regards, the inside; internally.
4. inside an enclosed place, area, room, etc.: *He was startled by a cry from within.*
5. in the mind, heart, or soul; inwardly.

preposition

6. in or into the interior of or the parts or space enclosed by: *within city walls.*
7. inside of; in.
8. in the compass or limits of; not beyond: within view; *to live within one's income.*
9. at or to some point not beyond, as in length or distance; not farther than: *within a radius of a mile.*
10. at or to some amount or degree not exceeding: *within two degrees of freezing.*
11. in the course or period of, as in time: within one's memory; *within three minutes.*
12. inside of the limits fixed or required by; not transgressing: *within the law.*
13. in the field, sphere, or scope of: within the family; *within one's power.*

37. The Merriam-Webster online dictionary⁴ defines “within” as follows:

Within

adverb

- 1 : in or into the interior : inside
- 2 : in one's inner thought, disposition, or character : inwardly
<search within for a creative impulse — Kingman Brewster 1988>

preposition

- 1 : used as a function word to indicate enclosure or containment
- 2 : used as a function word to indicate situation or circumstance in the limits or compass of: as
a : before the end of <gone within a week>

⁴ "Within." Merriam-Webster.com. Merriam-Webster, n.d. Web. 3 Jan. 2014. <<http://www.merriam-webster.com/dictionary/within>>.

b (1) : not beyond the quantity, degree, or limitations of <live within your income> (2) : in or into the scope or sphere of <within the jurisdiction of the state> (3) : in or into the range of <within reach> <within sight> (4) —used as a function word to indicate a specified difference or margin <came within two points of a perfect mark> <within a mile of the town>

3 : to the inside of : into <sunk the sea within the earth — Shakespeare>

38. It is important to note that both of the above definitions agree that for something to be “within” it is either “in” or “into,” in this case, the relevant enclosure. While “in” could mean being entirely contained, “into” is a lesser variant encompassing a *partial* state of entry and/or containment. This distinction is important where, as here, there is a partial incursion into a town.
39. Moreover, where the legislature has intended the term “within” to be so strictly construed to include only total or majority enclosure in a geographic boundary, it has done so explicitly by appending words such as “entirely” and “substantially.” See, e.g., General Statutes §§ 7-233e (b) (27) (A); 10a-109gg (b); 12-217u (a) (3); 12-218 (c); 12-251 (a); 12-265 (b) (2); 14-236; 17a-482; 17a-670 (b); 26-1 (15); 31-222 (a) (4); 31-223 (d); and 31-255 (a).
40. Indeed, if the Commission were to read the term “entirely” into “within,” an elector residing in a dwelling unit straddling two jurisdictions would be able to register and vote in *neither*, which surely would not have been the legislature’s intent when enacting the amendment.
41. The Commission also recognizes the similarity of both the text and the circumstances of enactment of General Statutes § 9-12 and General Statutes § 10-186 (a) (2), which concerns residency for purposes of a public school education. Section 10-186 (a) (2) reads, in pertinent part:
- (a) For purposes of this section, . . . (2) a child residing in a dwelling located in more than one town in this state shall be considered a resident of each town in which the dwelling is located and may attend school in any one of such towns. For purposes of this subsection, “dwelling” means a single, two or three-family house or a condominium unit.

42. The respondent in *Porricelli* argued that the Commission should adopt the so-called “constellation of interests” geographic area test for purposes of public school attendance, citing *Baerst v. State Board of Education*, 34 Conn. App. 567 (1994). The Commission found it compelling that this test was codified in General Statutes § 10-186 (a) (2) subsequent to the decision in *Baerst*.⁵
43. However, after analyzing the proposed test, the Commission in *Porricelli* ultimately rejected it, but largely because the legislature had not codified a dwelling unit test in Title 9 at that point:

The legislature could have, but did not, extend this rationale concerning dwelling units located in more than one town for educational purposes to voting. The Commission further finds that the policies behind a determination of residency for public school education are not identical to those for a determination of bona fide residency for purposes of voting, and that the same conclusion or analysis is not compelled. (Emphasis added.) *In the Matter of an Appeal of Gerald J. Porricelli and Marianne Porricelli against the Board for Admission of Electors and Registrars of the Town of Greenwich*, File No. 2007-154 at ¶ 47.

44. As discussed above, after the Commission’s decision in *Porricelli* the legislature codified a geographic area test for Title 9 in the next legislative session consistent with the holding in that case and substantially similar—though stricter insofar as it sets “dwelling unit” rather than “dwelling” as the controlling term—to General Statutes § 10-186 (a).
45. With the above in mind, the Commission determines that considering the text of the “geographic boundaries” clause in § 9-12 and its relationship to the aforementioned statutes, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, where, as here the facts include a property that contains a dwelling unit straddling more than one town and/or district.
46. Considering the facts of this case against General Statutes § 9-12, as amended by Public Act 07-194 of the 2007 Public Acts, the Commission finds that the evidence in this matter is sufficient to conclude that the Respondents’ “dwelling unit” is located within the geographic boundaries of both the Town of Westport and the City of Norwalk.
47. As discussed above, where an individual truly maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can

⁵ See Public Act 97-31 of the 1997 Public Acts.

choose either one of those residences to be their bona fide residence for the purposes of election law so long as they possess the requisite intent and register and vote in only one.

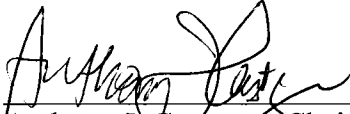
48. While the Commission makes no determination here as to whether the Respondents have legitimate, significant, and continuing attachments to the City of Norwalk, if such were the case, the facts and the law support the conclusion that the Respondents here have the right to choose between the two municipalities for purposes of voting.
49. In this instance, the Respondents wish to remain registered to vote in the Town of Westport. As discussed above, there is no controversy as to whether the Respondents maintain legitimate, significant, and continuing attachments to the Town of Westport, or that they are citizens of the United States and have attained the age of eighteen years.
50. As the Commission here finds that their dwelling unit is located within the Town of Westport under General Statutes § 9-12, the Commission concludes that the Respondents are and may remain bona fide residents there so long as they continue to meet the above criteria.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the matter is dismissed

Adopted this 15th day of January, 2014 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission