

Maria and Helen:

At our recent video conference we discussed whether the Town has any rights of access over Omaha Road, a private way in the Indian Neck subdivision, by virtue of either: (a) the location of the Town Landing near the end of Omaha Road, or (b) the Town's recent acquisition of the beach and tidelands abutting the Indian Neck subdivision. We advised that Town ownership of land does not in itself create public access rights over other privately owned land. Thus, unless specifically or impliedly acquired with that land, such rights would have to be acquired separately by acceptance of a gift, by eminent domain, by purchase, or, in the case of non-registered land, by continuous, adverse or prescriptive use for more than twenty years.

The question was also presented whether the fact that the beach and tidelands were once part of the subdivision tract gives rise to appurtenant rights to use all of the ways included on the subdivision plan, including Omaha Road. The original subdivision was neither filed for registration prior to February 1, 1952, nor recorded before the subdivision control law (SCL) took effect in the Town. I explained that pursuant to G.L. c. 41, § 81FF, the land shown on the original subdivision plan was not exempt from application of the subsequently effective SCL, *except* with respect to (1) any individual lots that had already been sold into ownership separate from the remainder of the subdivision tract when the SCL came into effect in the Town, and (2) any rights of way and other easements conveyed appurtenant to those separately owned lots. *Toothaker v. Planning Board of Billerica*, 346 Mass. 436 (1963). Therefore, the successor owner(s) who acquired large tracts of land carved from the subdivision cannot claim exemption from subdivision control. Those tracts are not "subdivided" into the lots and streets, and cannot be used or conveyed out as such, unless authorized by planning board action. See *Clows v. Planning Board of Middletown*, 12 Mass. App. Ct. 129, 132 (1984). Based upon the statute and the case law, we advised that the Town's acquisition of the beach and tidelands did not include any appurtenant rights to use any of the ways shown on the pre-

SCL Indian Neck subdivision, even if that land had been shown as lots on the original subdivision plan.

Please do not hesitate to contact me with any questions.

Very truly yours,

Katharine Lord Klein

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