



January 24, 2007

Donna Champagne O'Keefe  
Board of Assessors  
22 Monument Avenue  
Swampscott, Ma 01907

Re: G.L. Chapter 61B – Recreational Land  
Qualifying Land for Purposes of Minimum Acreage Requirement  
Our File No. 2006-353

Dear Board Members:

This is in reply to your letter posing several questions with regard to the minimum five acre size requirement for a parcel of land to qualify for classification under the provisions of G.L. c. 61B, the special property tax classification for qualifying recreational land. Apparently, you have received an application for recreational land classification for certain land of a beach club and have questions regarding the inclusion of areas of land separated by a public way and areas described as private tidelands.

From the information provided, it appears that a certain area of the subject land is used as a beach club, which offers swimming and tennis to members on a seasonal basis. The remainder, it seems, is open and undeveloped land that is utilized as a parking area for beach and club users but is separated by a public way. Specifically, you inquire as to whether this latter area, if the requirements for classification are otherwise satisfied, may be included in the application for purposes of satisfying the minimum five acre requirement. Additionally, you ask about the appropriate boundary line to be used in considering the area of the parcel that may be included as a part of the parcel where a portion thereof is "tidelands".

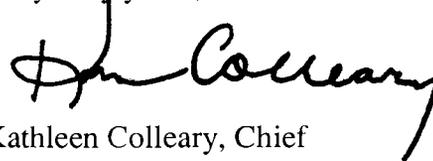
As you point out in your first question, G.L. c. 61B does not include any explicit language defining parcel, contiguous land or other descriptive term relevant to the necessary five acres of land. On the other hand, G.L. c. 61 and c. 61A do include certain references and provisions that expressly serve to allow land under the same ownership and separated only by a public or private road to be treated as the same unit of land for purposes of satisfying the minimum acreage requirements. As a result, you request our opinion as to whether the land of the beach club on the other side of the public way may be included when computing compliance with the five acre size requirement of G.L. c. 61B. In our view, the land may be included. Where the purposes and intents of the three special property tax programs appear so consistent, and the overall schemes of assessment administration and taxation so similar, we would not conclude that the minimum acreage provisions be interpreted and applied so inconsistently under G.L. c. 61B as to exclude land under the same ownership and devoted to qualifying uses only because of the circumstance of a bisecting public or private way. We think this is the better view where the issue is not explicitly addressed in the statutory language. In this regard, we would also note that in cases where separate tracts or parcels of

land under the same ownership are contiguous or separated from the other parcels or tracts by roads, the courts have held that the assessors may treat the property as a single unit for assessment purposes. Town of Franklin v. Metcalfe, 307 Mass. 386 (1940) (two contiguous parcels owned by the same person); Lenox v. Oglesby, 311 Mass. 269 (1942) (two parcels separated by road used as one estate).

Your second question asks whether the land area between the high and low water marks may be used in calculating compliance with the minimum five acre requirement. In our view, the boundary to be used respecting the “tidelands” should be the low water mark. We believe that the law is clearly settled that private ownership of land along tidal waters extends to the low water mark (but not more than 100 rods from the high to low water mark.) In this regard, see Michaelson v. Silver Beach Association, 342 Mass. 251 (1961). Accordingly, in the circumstances presented, we are of the opinion that the area down to the low water mark of the coastal property may be used for purposes of satisfying the minimum five acre requirement.

I hope this information proves helpful. If you need further assistance in this or any other matter, please do not hesitate to contact me.

Very truly yours,



Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC/DJM