

DERELICT FEE STATUTE, PRIVATE WAY RIGHTS & EASEMENT

Julianna M. Charpentier, Esq.
Robinson & Cole

Robert K. Hopkins, Esq.
Phillips & Angley

PRIVATE STREETS & WAYS



DERELICT FEE STATUTE: G.L. C. 183, § 58

(FEE OWNERSHIP)

Every instrument passing title to real estate abutting a way... shall be construed to include any fee interest of the grantor in such way... unless (a) the grantor retains other real estate abutting such way... in which case, (i) if the retained real estate is on the same side, the division line between the land granted and the land retained shall be continued into such way... as far as the grantor owns, or (ii) if the retained real estate is on the other side of such way... between the division lines extended, the title conveyed shall be to the center line of such way... as far as the grantor owns, or (b) the instrument evidences a different intent by an express exception or reservation and not alone by bounding by a side line.

DERELICT FEE STATUTE: G.L. C. 183, § 58

(FEE OWNERSHIP)

The statute was first enacted in 1971 and “codified what was already a general principle.” *Lane v. Zoning Bd. of Appeals of Falmouth*, 65 Mass. App. Ct. 434, 437 (2006).

“[U]nder the common law rule of construction the mention of a way as a boundary in a conveyance of land was presumed to mean to the middle of the way if the grantor owned the way. This presumption could be overcome by clear proof of a contrary intent of the parties from the language of the deed and the attendant circumstances surrounding the conveyance.” *Silva v. Planning Bd. of Somerset*, 34 Mass. App. Ct. 339, 343 (1993) (citations omitted).

DERELICT FEE STATUTE: G.L. C. 183, § 58

(FEE OWNERSHIP)

The statute, thus, “embodies an even stronger presumption in favor of vesting title in abutters than the common-law rule that it superseded,” *Rowley v. Massachusetts Elec. Co.*, 438 Mass. 798, 804 (2003).

The law’s “object was ‘to meet a situation where a grantor has conveyed away all of his land abutting a way or stream, but has unknowingly failed to convey any interest he may have in land under the way or stream, thus apparently retaining his ownership of a strip of the way or stream.’” *Id.*, at 803, quoting 1971 House Doc. No. 5307. Its intended “effect was to quiet title to sundry narrow strips of land that formed the boundaries of other tracts.” *Id.* In order properly to effectuate this purpose, the Legislature made the statute retroactive. *See id.*, at 803.

DERELICT FEE STATUTE: G.L. C. 183, § 58

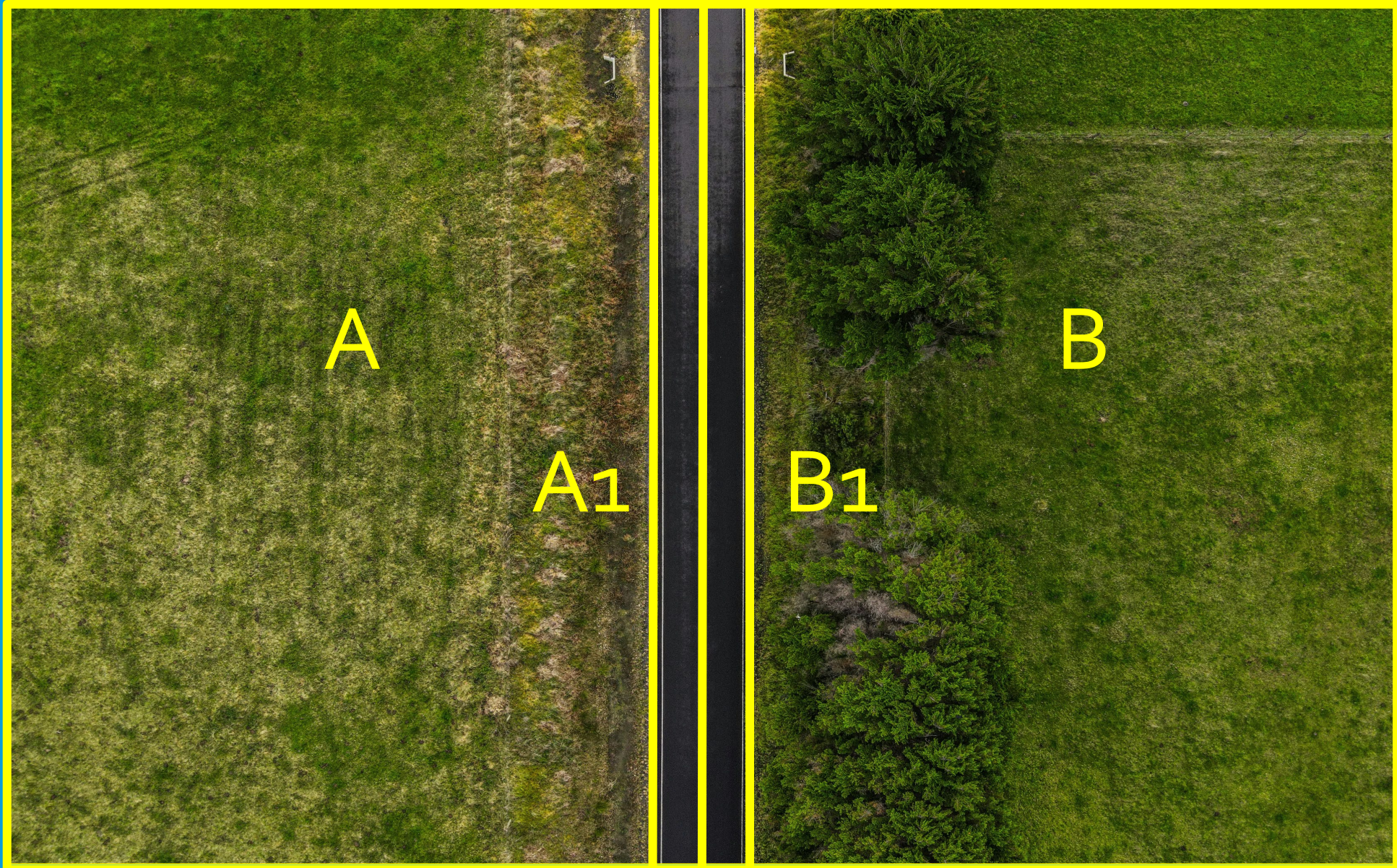
(FEE OWNERSHIP)

Exception or Reservation

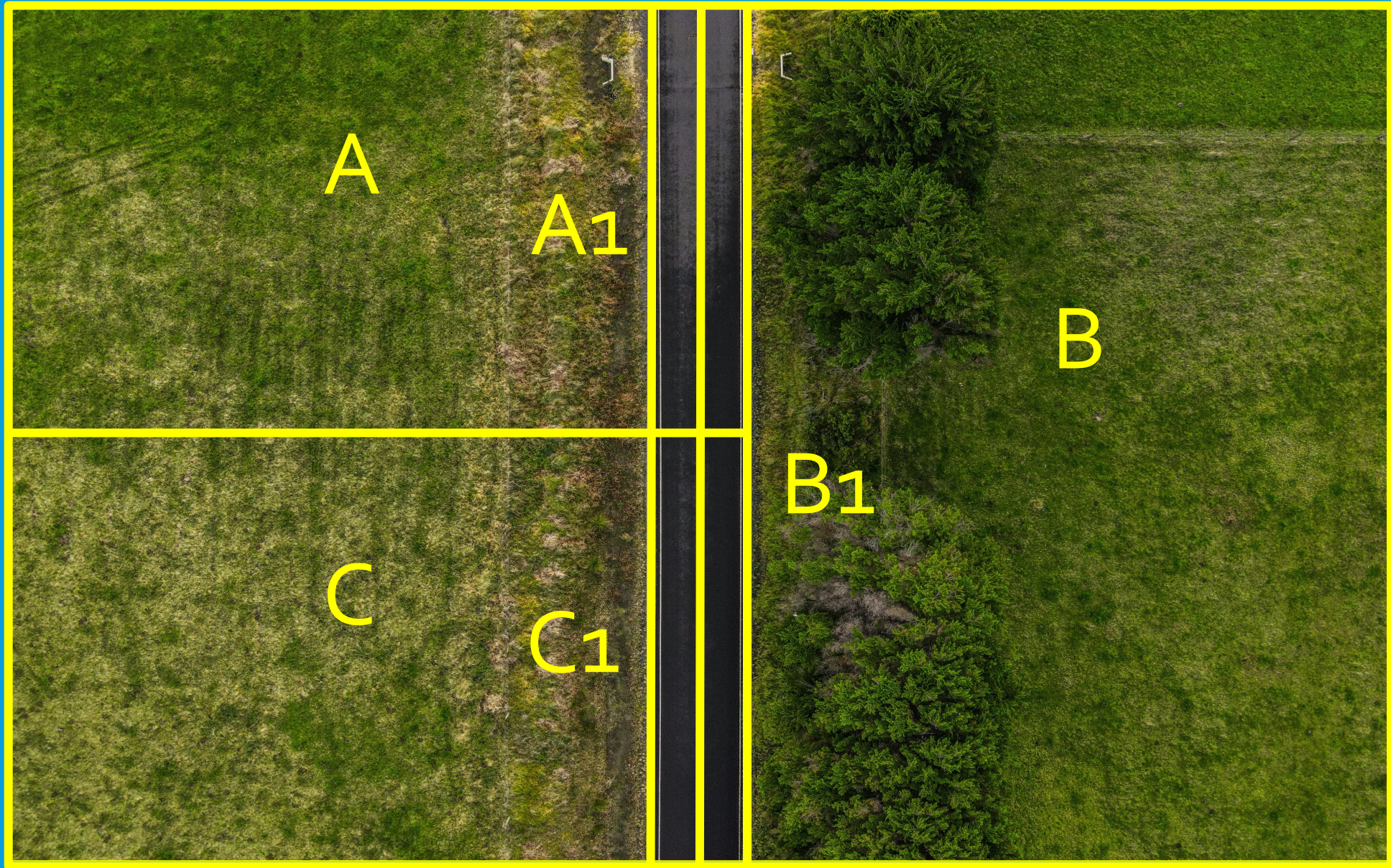
The only effective method to overcome the operation of the statute is to include “an express exception or reservation” of the ownership interest in the way in the deed itself. *See Tattan v. Kurlan*, 32 Mass. App. Ct. 239, 245 (1992).

Resort cannot be made to evidence outside of the four corners of the instruments of conveyance and the plans of record incorporated into the same by reference. *See McGovern v. McGovern*, 77 Mass. App. Ct. 688, 699 (2010).

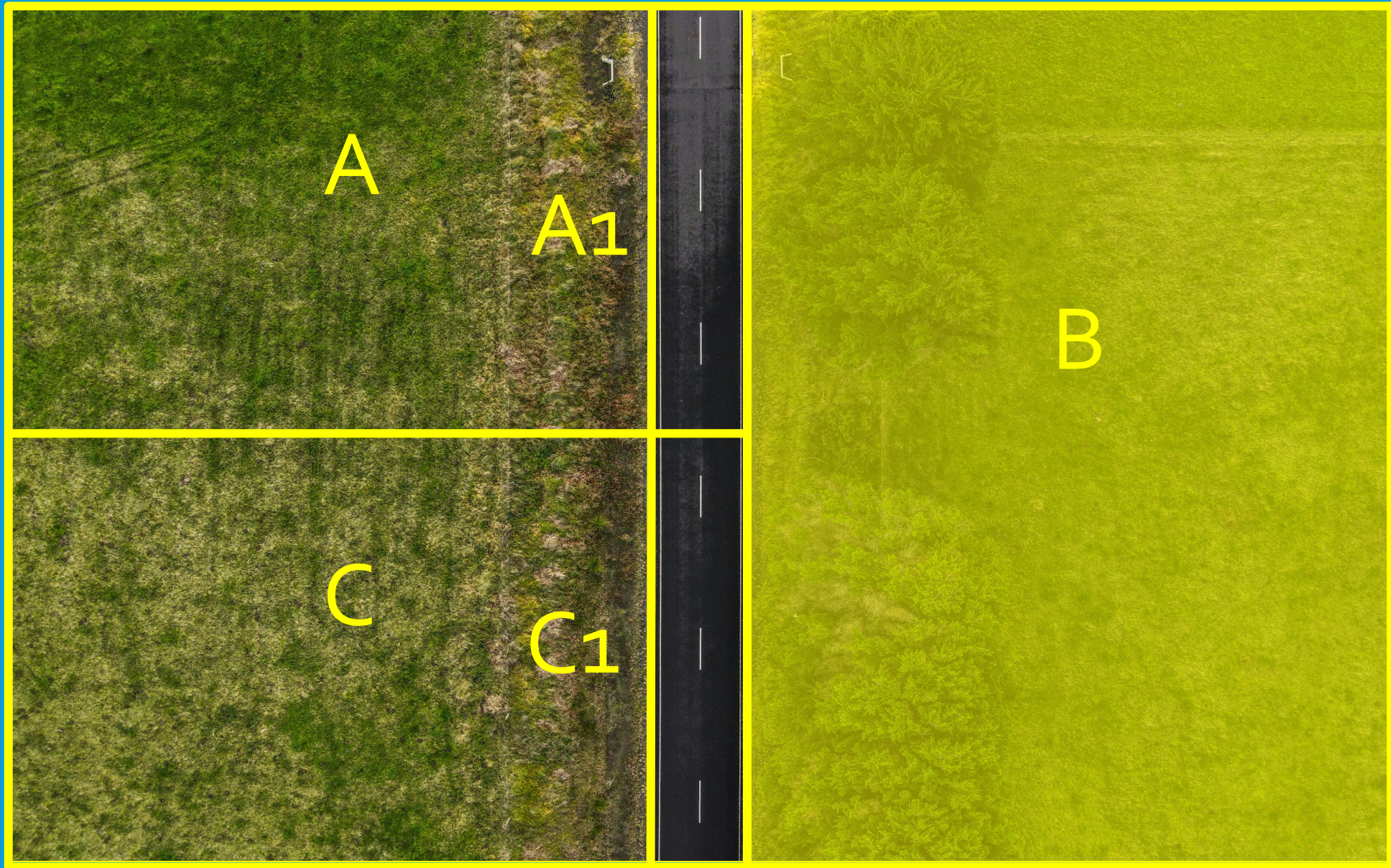
Common Estate A&B



Common Estate A, B & C

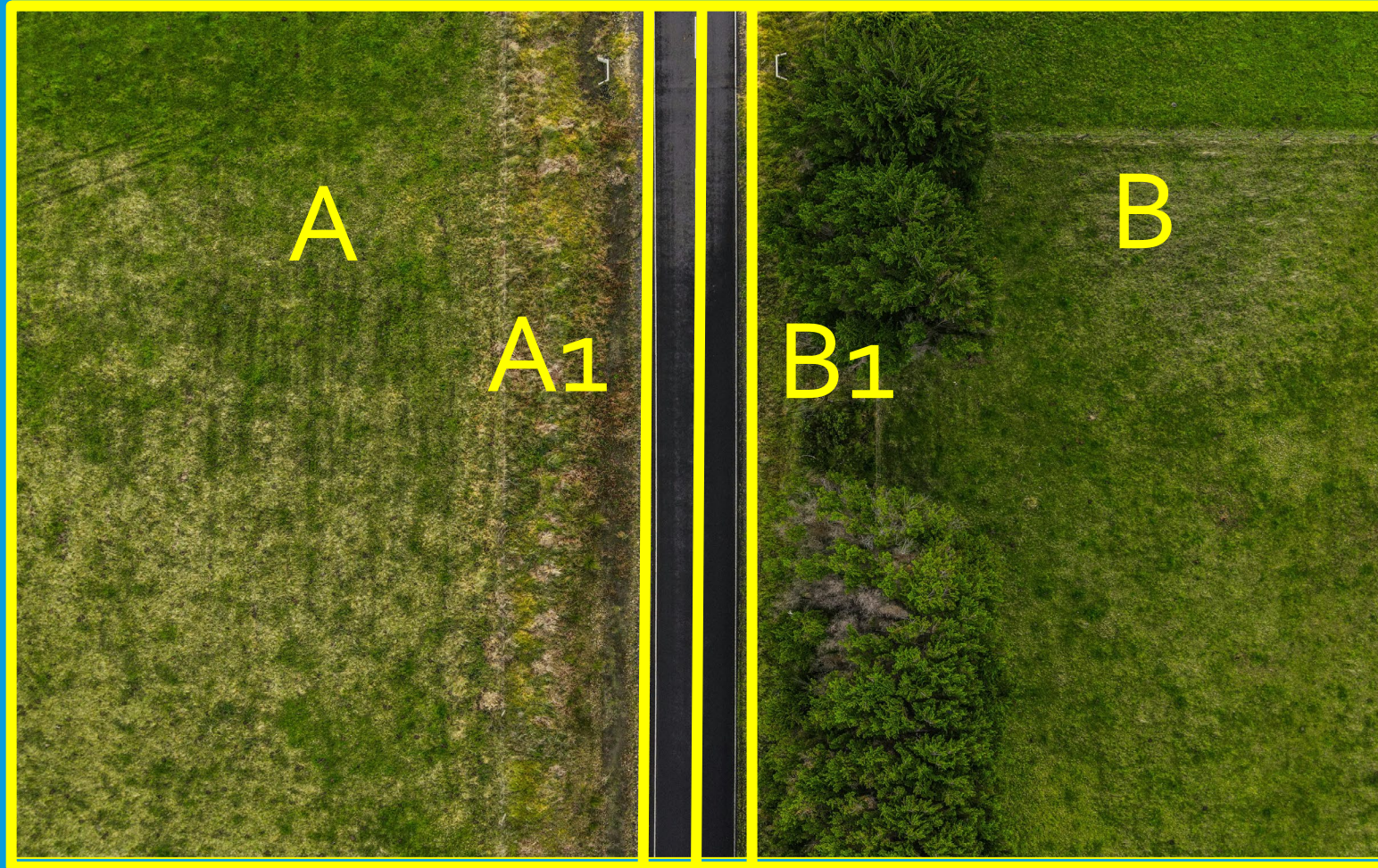


Common Estate A&C



Property at End of Way

C

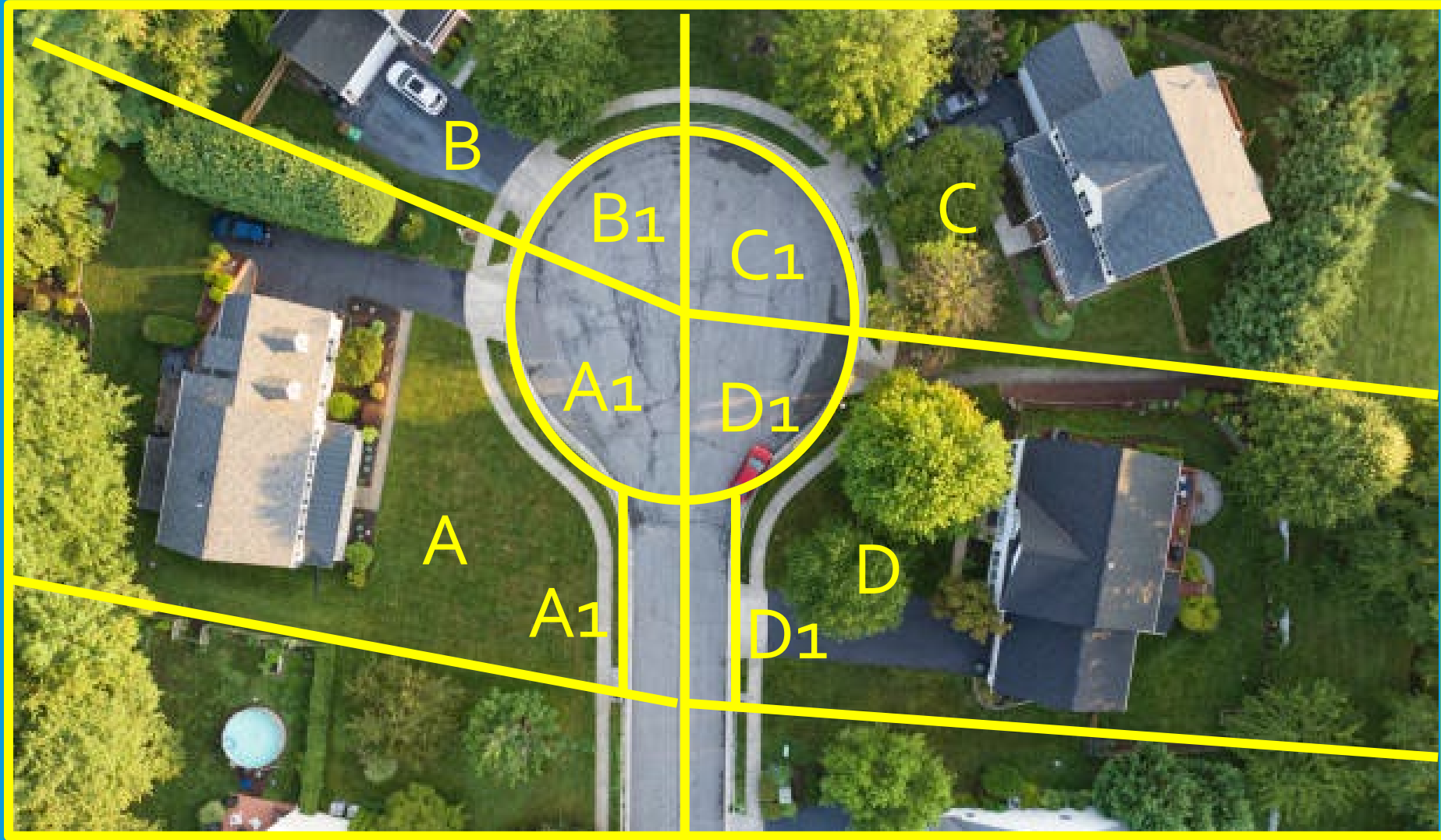


PROPERTY AT END OF WAY

Emery v. Crowley, 371 Mass. 489, 494 (1976)

“The statute establishes a comprehensive rule to cover these questions. By its terms it includes, in “abutting” real estate, land “on the same side” of the way in question, see G. L. c. 183, § 58 (a) (i), and land “on the other side of such way,” see G. L. c. 183, § 58 (a) (ii). The statutory silence with regard to real estate at the end of the way signifies that such real estate does not “abut” the way in the traditional or statutory sense of the word. Indeed, logically the landowner at the end of a way cannot acquire any fee interest in the way without encroaching on the property rights, if any, of the abutting side owners. The term “abutting,” in the context of fee ownership of ways after conveyance of property bounded on a way, thus refers to property with frontage along the length of a way.”

Property on a Cul-De-Sac



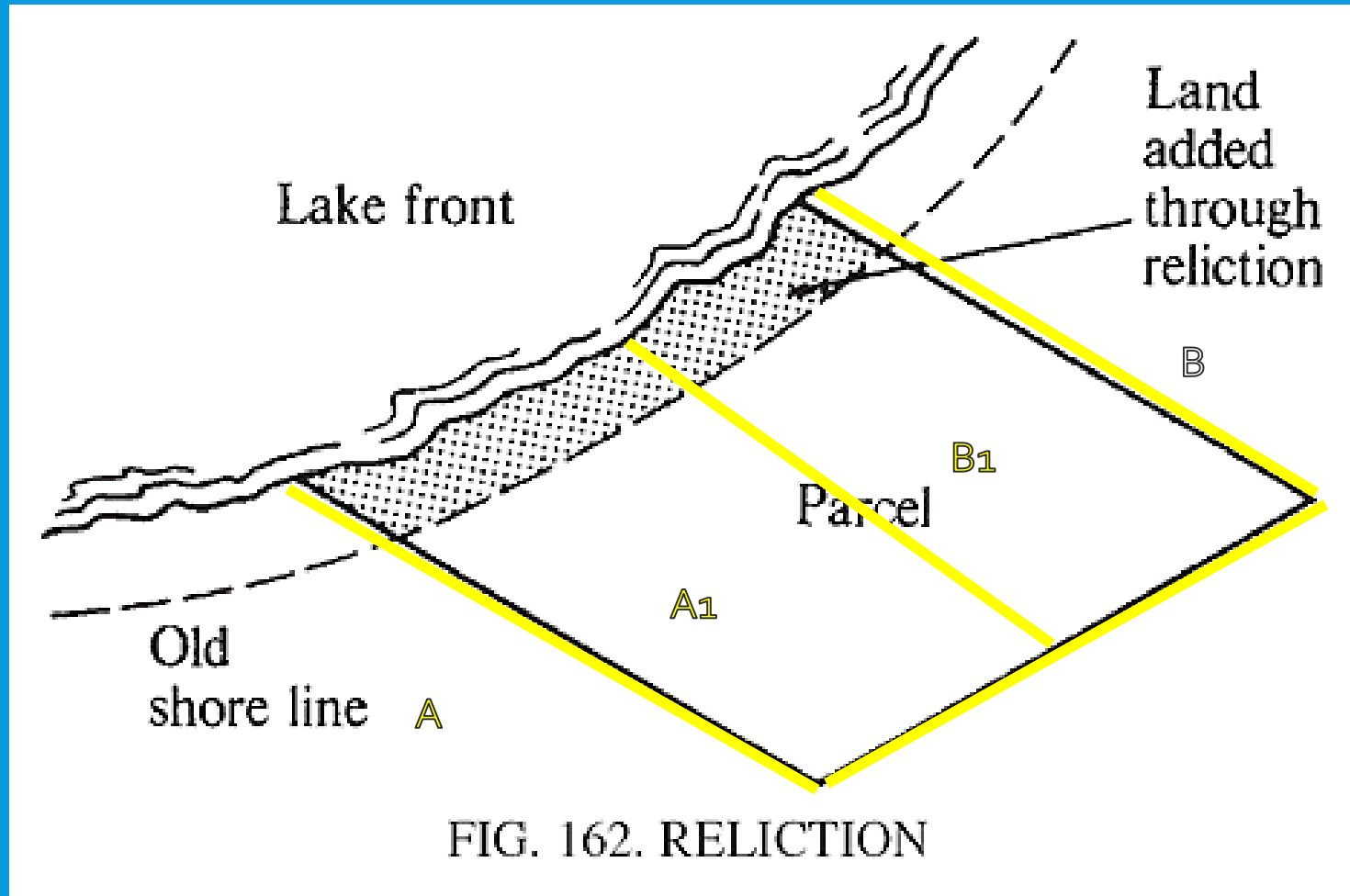
PROPERTY ON A CUL-DE-SAC

Tighe v. O'Brien, 22 LCR 122, 125 (Feb. 27, 2017)
(Misc. Case No. 000615) (Speicher, J.)

“A cul-de-sac does indeed further extend the length of the way. It is composed of sides that carry forward the way in the same direction and along the same course as before, only with the additional feature of curvature, providing additional frontage to the lots along the cul-de-sac. By providing additional frontage, the sides of a cul-de-sac serve to lengthen the way no differently than do the parallel bounds of any other section along the length of a roadway. Indeed, the measurement of the actual length of a road ending in a cul-de-sac is typically to either the center of the circle or its furthest arc, rather than its beginning, thus recognizing the additional length provided by the sides of the cul-de-sac.”

“It is thus consistent with the rule set forth in Emery to hold that parcels along the circumference of a cul-de-sac abut the way, as a cul-desac logically provides frontage ‘along the length of the way.’”

Property on a Littoral Boundary



PROPERTY ON A LITTORAL BOUNDARY

Kubic v. Audette, 98 Mass. App. Ct. 289 (2020)

“As a general rule, a littoral owner is entitled to newly emergent land whether that land emerged as a result of accretion (the gradual buildup of material next to the existing land) or reliction (the gradual receding of the waters), while such an owner loses title to land lost to the water through erosion.”

“Applying these principles to the facts established at trial is straightforward and leads to the conclusion that whoever holds title to the ROW above the 1948 waterline now holds title to the shoreline area below it.”

EASEMENTS

- An easement is a right to use someone else's property in the ways described in the easement.
- Appurtenant easement rights.
- Easement rights can also be granted by deed.
- But "[a]n easement cannot be imposed by deed in favor of one who is a stranger to it." Hodgkins v. Bianchini, 323 Mass. 169, 172 (1948).
- Easements can also arise under other sets of circumstances (i.e. necessity, prescription, implication).
- The property subject to the easement, or that has the easement over it, is the servient estate.
- The property that has the right to use someone else's property is called the dominant estate (the easement holder).

EXTINGUISHMENT OF EASEMENT RIGHTS IN PRIVATE WAYS

- Deeded easement rights can be extinguished.
 - Termination upon the happening of some particular act (i.e. as set forth in a deed).
 - Adverse Possession/Prescription
 - Abandonment
 - Substitution
 - Frustration of Purpose
- Ignorance or disregard of easement rights will not in and of itself establish an intention to relinquish or surrender these rights. Dubinski v. Cama, 261 Mass. 47 (1927)

USES OF PRIVATE WAYS AND EASEMENTS

Overburdening, Overloading, and Impairing Others' Rights

OVERBURDENING

- Using an easement “for a purpose different from that intended in the creation of the easement.” Taylor v. Martha’s Vineyard Land Bank Comm’n, 475 Mass. 682, 685, n. 11 (2016).
- Can be by changing (1) manner, (2) frequency, or (3) intensity of use. See id. at 687.

KUBECK V. AUDETTE, 102 MASS. APP. CT. 228 (2023)

- Easement holders given “a right to use the ROW to gain access” to lake
 - Explicitly excluded long-term vehicle parking and occupying the shoreline area (such as hosting social gatherings) without permission of owners of servient estates
- One easement holder constructed a large, trident-shaped dock. Beyond transient uses permitted by ROW.
- “Audette offered no support by way of evidence or specific cases holding that erecting, maintaining, and using a dock in front of the lakefront properties of others is a normal or reasonably anticipated use of a right of way intended to allow easement holders to pass through those properties to reach the lake.”

NOT EVERY CHANGE IN USE = OVERBURDENING

- “Overburdening of an easement for a right of way comes into play only where the use of the easement exceeds what is allowed by right.” BOUL RE HOLDINGS, LLC, Plaintiff, v. SHERRY DONG, et al., No. 24 PS 000238 (HPS), 2024 WL 4661856 (Mass. Land Ct. Nov. 1, 2024) (emphasis added).
- Where easement language broadly but unambiguously provides for easement to access property, Court would not limit access to certain types of use
- Prior uses of ROW were automotive repair and wholesale oil delivery businesses, and use for two multi-unit dwellings (totaling 57 units) was permitted by plain reading of easement language

OVERLOADING: BRIGHT-LINE RULE

- “The concept of overloading an easement occurs when the owner of the easement attempts to use the easement to benefit other land to which the easement is not appurtenant.” Griffith v. Wright, No. 20 MISC 000036 (KTS), 2023 WL 3003802, at *15 (Mass. Land Ct. Apr. 19, 2023) (citation omitted).
- “Bright-line Rule”: ROW “cannot be used by the owner of the dominant tenement to pass to or from other land adjacent to or beyond that to which the easement is appurtenant.” Murphy v. Mart Realty of Brockton, Inc., 348 Mass. 675, 678-679 (1965).

OVERLOADING: BRIGHT-LINE RULE

- Applies without any analysis of overburdening
- In other words, it does not matter if it would result in additional use of the easement or burden on the servient estate. Maureen's Mirtilli, LLC v. Idlewild Acres LLC, No. 21 MISC 000625 (HPS), 2023 WL 8525565, at *13 (Mass. Land Ct. Dec. 7, 2023) (citing Taylor v. Martha's Vineyard Land Bank Com'n, 475 Mass. 682, 686 (2016)).

IMPAIRING OTHERS' RIGHTS

- Owners of co-dominant estates have an obligation “to act reasonably in exercise of their privileges so as not to interfere unreasonably with the rights of other easement holders.” Highland Homes at Fort Hill 1 Condo. Tr. v. Scott, No. 22 MISC 000595 (MDV), 2024 WL 3822267, at *5 (Mass. Land Ct. Aug. 15, 2024) (further citation omitted).
- In ROW context, classic examples are:
 - No parking. “Easements granted for passage typically don't include the right to park.” *Id.*
 - But, if parking doesn't eliminate ability to pass, it may be permitted.
 - No fences, plantings, or other permanent obstructions



QUESTIONS?