Daniel A. McAllister and Charlene T. McAllister,
Trustees of the Daniel A. and Charlene T. McAllister Trust

v.

City of Laconia

Docket No. 4504-88

DECISION

The "Taxpayers" appeal the 1988 assessment of property on Lake Winnesquam delineated as "Lot 24" and "Lot 26." Because of the City's actions described next, this appeal also covers "Lot 28." Originally in the 1988 tax year, the "City" assessed these three lots as separate tax lots. At some point in the abatement process, the City merged Lots 24, 26 and 28 into one tax lot because the lots did not individually comply with certain dimensional requirements in the City's zoning ordinance. This merger was done pursuant to RSA 75:9 and article 4, section 4.11 of the City's zoning ordinance. For the reasons explained below, we are retaining jurisdiction over this appeal, but we are remanding this appeal to the City for new assessments.

The crux of this appeal is whether the City properly merged all three lots into one tax lot. To support the merger, the City must first show complete unity of ownership both in the persons holding title and the manner in which title is held. See RSA 75:9 ("the same owner"); City of Laconia Zoning

Ordinance, article 4, section 4.11 ("same ownership"); Fearon v. Town of Amherst,

116 N.H. 393 (1976); see also 2 Rathkopf, The Law of Zoning and Planning section 32.07 at 42-18,-19; 28 Am. Jur. 2d Estates section 374 at 580. After reviewing the deeds and the Taxpayers' evidence concerning ownership, there was no unity of ownership of all three lots as of or before April 1, 1988.

As of April 1, 1988, Lots 26 and 28 were owned by Daniel A. (Jr.) and Charlene T. McAllister, and Lot 24 was owned by Rosalie M. McAllister (1/2 interest) and Daniel A. (Jr.) and Charlene T. McAllister (1/2 interest). Thus, Lot 24 should not have been merged with Lots 26 and 28 because the lots were not owned by the same people. On the other hand, Lots 26 and 28 were in common ownership on April 1, 1988.

Whether Lot 26 and Lot 28 should be assessed as one tax lot depends on several factors for which there is no hard and fast rule. See Appeal of Loudon Road Realty Trust, 128 N.H. 624, 627-28 (1986). Based on the record before us, Lots 26 and 28 should be taxed as one lot. The factors supporting this conclusion are: 1) unity of ownership for several years; 2) both lots conveyed in the same deed; 3) Lot 26's and Lot 28's nonconformance with certain dimensional, zoning requirements, including noncompliance with the minimum-lot-size requirement; and 4) the City's decision to treat Lots 26 and 28 as merged pursuant to article 4, section 4.11 of the City's zoning ordinance.

The City did not assess Lots 26 and 28 as one lot. Therefore, we are remanding this appeal to the City. On remand the City shall reassess all of the lots in accordance with this decision. The City shall provide the board and the Taxpayers with the revised assessment cards within thirty (30) days of the clerk's date below. The Taxpayers shall file within twenty (20) days of

receipt

of the new assessment cards any objection they have with the new assessments. Such objections shall be limited solely to the new assessments and not the decision herein. The City will have ten (10) days to respond to the Taxpayers' objection. Upon receipt of the parties' material, the board will decide the assessment issue without further hearing. If either party has an objection to this decision, they must file a motion for rehearing within twenty (20) days of this decision pursuant to RSA 541:3.

The board encourages the parties to discuss the new assessments and to attempt to reach an agreement on the assessments if possible. If an agreement is reached, the parties shall state so in writing signed by both parties and filed with this board.

The board is mindful that both parties presented testimony showing a lack of knowledge concerning the ownership and status of the lots. The Taxpayers have treated Lots 24 and 26 as one lot, i.e., there was unity of use. However, because there was no unity of ownership, Lots 24 and 26 cannot be taxed as one lot. The Taxpayers also established that they treated Lot 28 as a separate lot from Lots 24 and 26. However, there was unity of ownership between Lots 26 and 28, and thus, these lots can be taxed as one lot. The City erred by merging all three lots when unity of ownership was lacking. The board believes this decision will frustrate both parties, but we have made this decision based on the evidence and the law. While. we cannot require it, the board encourages the parties to use this decision as an opportunity to discuss possible ways to resolve this

issue of the treatment of the lots. Perhaps even agreeing that Lots 24 and 26 shall be one record lot and Lot 28 shall be a separate lot. Obviously, such a scenario will require some change in ownership.

The parties should be aware that the board's decision is strictly limited to whether the lots should be treated for tax purposes as separate or merged lots. The board is not making any decision about the City's merger of the lots for other purposes, e.g., land use issues. Such other issues are outside this board's jurisdiction.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____

Peter J. Donahue, Member

_____

Paul B. Franklin, Member

_____

Ignatius MacLellan, Member

Date: October 26, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Daniel A. & Charlene T. McAllister Trust, taxpayers; and Chairman, Board of Assessors of Laconia.

_____

Michele E. LeBrun, Clerk

Date: October 26, 1990

0009

Daniel A. McAllister and Charlene T. McAllister Trust
v.
City of Laconia

Docket No. 4504-88

DECISION

Pursuant to the Board's October 26, 1990 order (the Order), the "City" submitted revised property record cards, with the following assessments:

1) Map 4, Block 253, Lot 24 - $216,500.00
(land, $147,100; building, $69,400)

2) Map 104, Block 253, Lot 26 - $240,500.00
(land, $181,200; building, $59,300).

The Taxpayers did not object to these revised assessments as allowed by the Order, and therefore, the Taxpayers have waived their opportunity to object. The Board has reviewed the revised assessments, and the above assessments shall be applicable for 1988. The City shall send the Taxpayers revised bills within 15 days of the clerk's date below.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Peter J. Donahue, Member

_____
Paul B. Franklin, Member

_____
Ignatius MacLellan, Member

Date: January 22, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Daniel A. & Charlene T. McAllister, representatives for Daniel A. McAllister and Charlene T. McAllister Trust, taxpayer; and the Chairman, Board of Assessors of Laconia.

_____

Michele E. LeBrun, Clerk

Date: January 22, 1991

0009