



May 18, 2006

Paul Plouffe
Board of Assessors
55 Main St.
Westford, MA 01886

Re: Taxation of Contiguous Lots as Separate Parcels
Our File No. 2006-105

Dear Mr. Plouffe:

This is in reply to your letter about the propriety of taxing two contiguous lots as separate parcels. The property is improved by a duplex or party wall house that is divided by the lot line, and the assessors have been taxing the two lots separately. An attorney for the taxpayer has argued that they constitute one parcel because they are under common ownership and could not be sold separately. In a telephone conversation you informed us that the two lots have the same assessed owner, who holds title to one lot in his individual capacity and to the other lot as trustee of a family trust.

With a few exceptions such as condominium units, there is no statutory definition of a parcel for property tax purposes. Generally, assessors have discretion to tax contiguous lots under common ownership either separately or as one parcel (*Lenox v. Oglesby*, 311 Mass 269; *Boston v. Boston Port Development Co.*, 308 Mass 72), and should assess property in accordance with its highest and best use. However, the *Lenox* and *Boston Port Development* cases do not discuss the impact of zoning on the use of property or the owner's ability to sell the lots separately. If zoning law would prohibit the division of the parcels by sale or otherwise, then we think that the assessors should assess the lots as one parcel, because assessment as separate parcels would create separate liens, and the foreclosure of one lien would separate the ownership of the two lots.

However, it is not clear to us that the two lots are under common ownership for zoning purposes. Although a trustee is the assessed owner of property, the addition or replacement of a trustee by an amendment to the trust instrument would require separate assessment of the two lots, since for property tax purposes they would clearly no longer be under current ownership. We do not know whether (or how) such separation of the ownership interests by a trust amendment, or even by an ordinary conveyance by deed, would be prohibited by virtue of the property's zoning status. We recommend that you discuss the effect of the property's zoning status with the town counsel or the zoning board of appeals, who are better placed than we are to advise you on such matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/CH