STATE OF MAINE
KENNEBEC, ss.

BOARD OF PROPERTY TAX REVIEW
Docket Nos. 2005-010, -011, -012, -013, and -014

TOWN OF ALFRED,

Petitioner

v.

ORDER ON JURISDICTION

JOHN SCHIAVI, ET AL.,

Respondents

Petitioner Town of Alfred has appealed to the Board from decisions of the town's Board of Assessment Review (BAR) granting abatements on four of five parcels of land that Respondent John Schiavi owns personally or through one or another company in which he has an interest.[1] As a whole, the five parcels constitute a 175-unit mobile home park known as Keywood Manor. The Board held a jurisdictional hearing on April 25, 2006, with Board members Dorcas Zeiner, Guy F. Chapman, John E. Hodgkins, and Eric E. Wright present. Ronald D. Bourque, Esq. represented the Town, and Michael S. Wilson, Esq. represented Schiavi.

Schiavi has moved to dismiss the appeals in Docket Nos. 2005-011, -012, -013, and -014. These correspond, respectively, to lots depicted on the town's tax maps as Map 1, Lots 23, 23D, 24, and 26.[2]

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[1] As will become evident, the title owner of the lots at issue varies, but we generally will refer to Respondent collectively, for convenience, as Schiavi .

[2] We include as an Appendix to this Order a simplified map (Schiavi Ex. 1) of the properties to allow the reader to understand better the relative locations of

Of these, the BAR granted abatements on all but what became our Docket No. 2005-012, Map 1, Lot 23D, as to which it *increased* the valuation. The BAR also granted an abatement on a fifth parcel, our Docket No. 2005-010, Map 1, Lot 1, owned by Keywood Associates, but that parcel has not been the subject of Schiavi's motion to dismiss because it was assessed at more than $1,000,000, the minimum equalized valuation of property within the Board's jurisdiction. *See* 36 M.R.S.A. §§ 843(1), 843(1-A), for municipalities having a BAR, and 844(2), for municipalities without a local BAR.

That suggests, as is the case, that Schiavi's motion to dismiss the Town's appeals is grounded centrally on the fact that none of the other four parcels has an equalized valuation of at least $1,000,000,[3] and thus we do not have jurisdiction. These appeals raise questions involving the meaning and application of section 843(1-A) that neither the Law Court nor this Board has addressed. Section 843(1-A) in pertinent part gives the Board jurisdiction over cases involving "nonresidential property or

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the Schiavi lots. Eighty-six of the sites, on Lot 1, were developed in 1973-1974, and 89, spread among Lots 23, 23D, 24, and 26, in 2001-2002.

[3] Lot 23 was assessed at $640,000, as to which the Board of Assessment Review granted an abatement of $101,800; Lot 23D was assessed at $233,400, as to which the BAR increased the valuation by $14,800; Lot 24 was assessed at $764,100, as to which the BAR granted an abatement of $18,900; and Lot 26 was assessed at $363,500, as to which the BAR granted an abatement of $53,000. The evidence at the hearing informed us that the BAR in valuing the parcels took the total valuation of the five parcels and divided that by 175, the number of mobile home sites on all the parcels, and then apportioned the valuations among the parcels according to the number of mobile homes sites on each. Schiavi's appraisal report (Town Ex. 1) indicates that this was so with respect to each of the lots except Lot 1, which has a lower per unit valuation.

properties with an equalized municipal valuation of $1,000,000 or greater either separately or in the aggregate . . . ."

The arguments of the parties raise ownership, usage, and contiguity as concepts to use when determining whether properties may be aggregated to meet the $1,000,000 threshold. The terms of the statute do not speak to any of these matters, and the Law Court has not considered previously what factors are to guide us when we must determine if aggregation is proper. But although neither the statute nor decided court decisions instruct one how aggregation is to be accomplished, we must have an analytical methodology for applying the aggregation that the statute permits, bearing in mind that property "[t]axation must be practical. It must bring results." *Sears, Roebuck & Co. v. Inhabitants of City of Presque Isle,* 150 Me. 181, 184, 107 A.2d 475, 477 (1954). *See also Kittery Electric Light Co. v. Assessors of Town of Kittery,* 219 A.2d 728, 741 (Me. 1966); *Cressey v. Parks,* 76 Me. 532, 534 (1884).

Because we are dealing with properties—parcels of real estate with "pads" for mobile homes—on which are located residences, owned by the residents, we must first determine whether the properties at issue are residential or nonresidential, for the Board does not have jurisdiction over residential properties. *Wingate, and Dale & Sea Meadow, LLC, v. Town of York,* Nos. 2003-005 & -006 (BPTR Dec. 1, 2003) (Order on Jurisdiction), *confirmed by Board,* June 4, 2004. We are dealing with the town's taxation of the parcels, with pads for mobile homes, not the mobile homes.

We are satisfied that the properties at issue are nonresidential. Although residents of Keywood Manor own their mobile homes, they rent from Schiavi the pads on which their homes are located. Schiavi holds each of the pads as commercial properties, and the town's assessors have chosen to tax Schiavi, not the individual tenants—presumably for reasons of efficiency—although 36 M.R.S.A. § 553 would allow them to tax either "the owner or person in possession" of the mobile home sites. *See, e.g., Alph Rho Zeta v. Inhabitants of City of Waterville,* 477 A.2d 1131, 1136 (Me. 1984); *Seaborne v. Look,* 464 A.2d 221, 222 (Me. 1983).[4]

The pads are there to be rented; Schiavi's actual or prospective leasing of them means they retain their character as nonresidential property. *See Ellen M. Leach Memorial Home v. City of Bangor,* 1998 ME 118, ¶ 6, 711 A.2d 149, 151 (congregate housing apartments to be leased by owner were nonresidential although people resided in the apartments); *Bethel Inn Corp v. Town of Bethel,* No. 2003-002, at 6-7 (BPTR Jan. 19, 2005) (timeshare units held as inventory for rental is commercial, non-residential property, but sold timeshares make up residential properties). Had the assessor taxed each pad to the owner of his or her mobile home, we could well have before us a different issue involving our jurisdiction.

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[4] Various parties, though not owners of property in fee simple, may be properly taxed as being in possession of it. *See, e.g., Portland Terminal Co. v. Hinds,* 141 Me. 68, 78, 39 A.2d 5, 9 (1944) (lessee); *Inhabitants of Town of Canton v. Livermore Falls Trust Co.,* 136 Me. 103, 106, 3 A.2d 429, 430 (1939) (holder of quitclaim deed); *Murray v. Ryder,* 120 Me. 471, 474-75, 115 A. 256, 257-58 (1921) (tenant); *Kelley v. Jones,* 110 Me. 360, 365, 86 A. 252, 254 (1913) (holder of life estate); *Desmond v. Inhabitants of Machias Port,* 48 Me. 478, 480 (1861) (lessor); *Williams v. Hilton,* 35 Me. 547, 554-55 (1853) (mortgagee)

We turn, then, to the matters of ownership, commonality of interests, and contiguity. We think that when considering whether properties may be aggregated under section 843(1-A), these matters should be addressed in the order we have just stated. The structure of Maine's property tax emphasizes ownership (or a possessory interest as its functional equivalent) as the preeminent consideration in determining who may be taxed. *See, e.g.,* 36 M.R.S.A. §§ 553-558. Further, the Board in the past has looked to ownership in deciding whether properties may be aggregated. In *Riverview Timeshare Trust v. Town of Bethel,* No. 2002-009, at 5 (BPTR Mar. 31, 2003) (Order on Jurisdiction), the Board held that

> properties aggregated to meet the $1,000,000 jurisdictional requirement [of the Board] must be owned by the same taxpayer. . . [P]roperties owned by *different* taxpayers, even with common interests as exist in this case, may not be aggregated to meet the $1,000,000 minimum valuation for the Board to acquire jurisdiction.

In the cases now before us, John Schiavi owns Lots 23, 24, and 26; the Schiavi Family Limited Liability Co. (SFLLC) owns Lot 23D. Schiavi argues that because Lot 23D is owned by an entity different from the other three lots, it cannot be aggregated. But as we have noted above, who holds title to property does not strictly determine tax liability. In the present case there is a close nexus between John Shiavi and SFLLC. John Schiavi is the President of Keywood Manor, and mail for SFLLC is sent to him. Shiavi's appraisal (Town Ex. 1) states that "Keywood Associates [and]

Schiavi Family Limited Liability Company are all under the ownership of John Schiavi."

In any event, Lots 23, 24, and 26, all owned by John Schiavi, have an aggregate valuation of greater than $1,000,000. If Lot 23D were not included in the aggregation simply because it was owned by SFLLC, it would stand alone, and the parties would be forced to litigate its valuation in another forum. *See* 36 M.R.S.A. § 843(1) (decisions of a BAR as to non-residential properties with an equalized valuation of less than $1,000,000 are appealable "directly to Superior Court"). Although he opposes aggregation, Schiavi acknowledged at the hearing that this would be, at least, wasteful of resources.

Riverview Timeshare Trust involved timeshares, which state law explicitly mandates "shall be separately assessed and taxed." 33 M.R.S.A. § 593(2). Our reluctance about relying on common interests as a factor in aggregating properties for jurisdictional purposes was limited to the "common interests such as exist[ed] in [that] case." That is, the common interests there—amounting only to the timeshares being "located together" and "managed by the same entity," *Riverview Timeshare Trust,* No. 2002-009, at 4—were not especially helpful when gauged against a directly controlling and textually clear statute.

We did not hold that common interests can never be an appropriate matter to consider when aggregating properties under section 843(1-A), although, consistent with *Riverview Timeshare Trust,* we adhere to first

considering the question of ownership (or actual possession, as allowed by 36 M.R.S.A. § 553 and relevant cases). Certainly that inquiry should be a prerequisite, and the starting point in each case. It is the necessary beginning of the inquiry; whether it is the ending as well, as in *Riverview Timeshare Trust,* depends on the particular facts of a given case.

Turning to the concept of common interests, in the present case there is a substantial interconnectedness to the lots before us. To begin, they share a private well-water system, septic tanks, and leach fields. This is most significant because the parties agree that the value of any parcel cannot be determined without regard to its having a water supply and sewage and waste facilities, and that is dependent upon the other parcels sharing the same systems. Thus, the valuation of any one parcel is said to be related to the valuations of the others.[5]

In addition, the properties share common management and maintenance, with an administrative office serving the entire mobile home park and a community building available equally to those who live on each lot.[6] Further, the very relationship here between Schiavi and the residents is fundamentally different from that of management and residents in *Riverview Timeshare Trust,* where the residents *were* the owners of the resi-

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[5] We are not to be understood as commenting at all on the valuation of any of the properties.

[6] The Town also argues that the fact that Schiavi's appraisal was done for all the lots *en masse* dictates that they should be aggregated. Schiavi argues that the town "forced" it to file separate appeals with the BAR, so that the lots cannot be aggregated. We think neither an appraiser nor a town through its filing procedures can dictate our decision on aggregation under section 843(1-A).

dences they occupied on a shared basis. Finally, unlike *Riverview Time-share Trust,* there is no governing statute that dictates how the parcels before us, which include multiple home sites, are to be assessed, thus making factors other than ownership more useful to consider.

Finally, we address the concept of contiguity. The parties disagree whether the parcels in the present appeal are contiguous and whether they must be in order to be aggregated under section 843(1-A). BLACK'S LAW DICTIONARY 338 (8th ed. 2004), defines "contiguous" simply as "[t]ouching at a point or along a boundary." This was one of several, somewhat broader, definitions offered in the 5th edition (1979), at 290: "In close proximity; neighboring; adjoining; . . . in actual close contact; touching at a point or along a boundary; bounded or traversed by." The reader was then told that "[t]he term is not synonymous with 'vicinal," meaning "of, relating to, or confined to a limited district or neighborhood," WEBSTER'S THIRD NEW INTERNATIONAL (UNABRIDGED) DICTIONARY 2549 (1963), although one definition of "contiguous" in BLACK'S has been "neighboring."

Drawing a distinction between "touching" and "neighboring" may be somewhat useful, but a brief review of apposite authorities does not fully illuminate the meaning of "contiguous." *Compare Wild v. People ex rel. Stephens,* 227 Ill. 556, 560-61, 81 N.E. 707, 708 (1907) (50-foot wide strip between parcels destroyed contiguity); *Route 4 Assoc. v. Town of Sherburne Planning Comm.,* 154 Vt. 461, 461-62, 578 A. 2d 112, 112-13

(1990) (same), *with Harvey Const. Co. v. Parmele,* 253 Iowa 731, 738, 113 N.W.2d 760, 764 (1962) ("even the presence of an interposed road does not prevent lands lying on the other side from being included in the meaning of the term ['adjacent and contiguous']").

In the property tax context, the Law Court held in *City of Augusta v. Allen,* 438 A.2d 472, 476 (Me. 1981), that the assessors acted lawfully in assessing, as one tract, property divided by a public road. If land that a public road divides may be considered to be one parcel for assessment purposes, it would seem to be defensible to think its parts are contiguous for taxing purposes. Similarly, in *McCarty v. Greenlawn Cemetery Ass'n.,* 158 Me. 388, 185 A.2d 127 (1962), tax liens on two parcels that a county road divided were declared invalid, not because the parcels were "physically detached and separately taxed portions of a gross property," *id.* at 392, 185 A.2d at 129, but because the liens failed to meet the strict requirements applicable to tax forfeitures. *Id.* at 394, 185 A.2d at 130.

Schiavi appears to contend that there must be perfect contiguity—actual sharing of boundary lines—to permit the aggregation of parcels under section 84(1-A). Adoption of this position would avoid a potentially vexing question: if true contiguity were not required, how far apart may properties be and still be aggregated? The Town, on the other hand, rather discounts contiguity and appears to take a more flexible position: the greater the degree of contiguity, the more persuasively one can argue for aggregation. That position would seem arguable given that the statute

is silent on any requirement of contiguity, which, to continue the argument, thus should not be read into it.

The parcels in this case are bundled together physically, not widely dispersed, and separated only by intersecting public roads. According to the deeds for the parcels, their boundaries with the roads lie at the sidelines of the roads. *Cf. Franklin Properties Trust v. Foresite, Inc.,* 438 A.2d 218, 223 (Me. 1981) ("Under Maine law, a conveyance to or by the sideline of a public street gives rise to the rebuttable presumption that the grantor intended to convey title to the center of the street unless a contrary intent is indicated"). Two single-family dwellings separate two of the lots, 23 and 23D, which are not themselves contiguous. Yet one could walk without interruption, other than crossing the roads, from Lot 23 to Lot 24 to Lot 23D to Lot 26 to Lot 1. The only possible reason for thinking the lots are not contiguous is that a public road separates each from the next.

We need not finally decide whether, in the present case, Schiavi's lots are truly contiguous, or the extent to which divergence from true contiguity still permits aggregation. Here the concepts of ownership and commonality of interests, taken together with at least substantial contiguity, are sufficient for us to conclude that, as a practical matter, each of the four lots that is the subject of Schiavi's motion to dismiss should be treated together and so may be aggregated under section 843(1-A).

For these reasons, Schiavi's motion to dismiss Docket Nos. 2005-011, -012, -013, and -014 is denied by a vote of 3-1. They may be aggre-

gated, and will be consolidated with Docket No. 2005-010 for hearing on the merits. Ms. Zeiner dissents, believing that ownership controls and that common usage is a business concept.

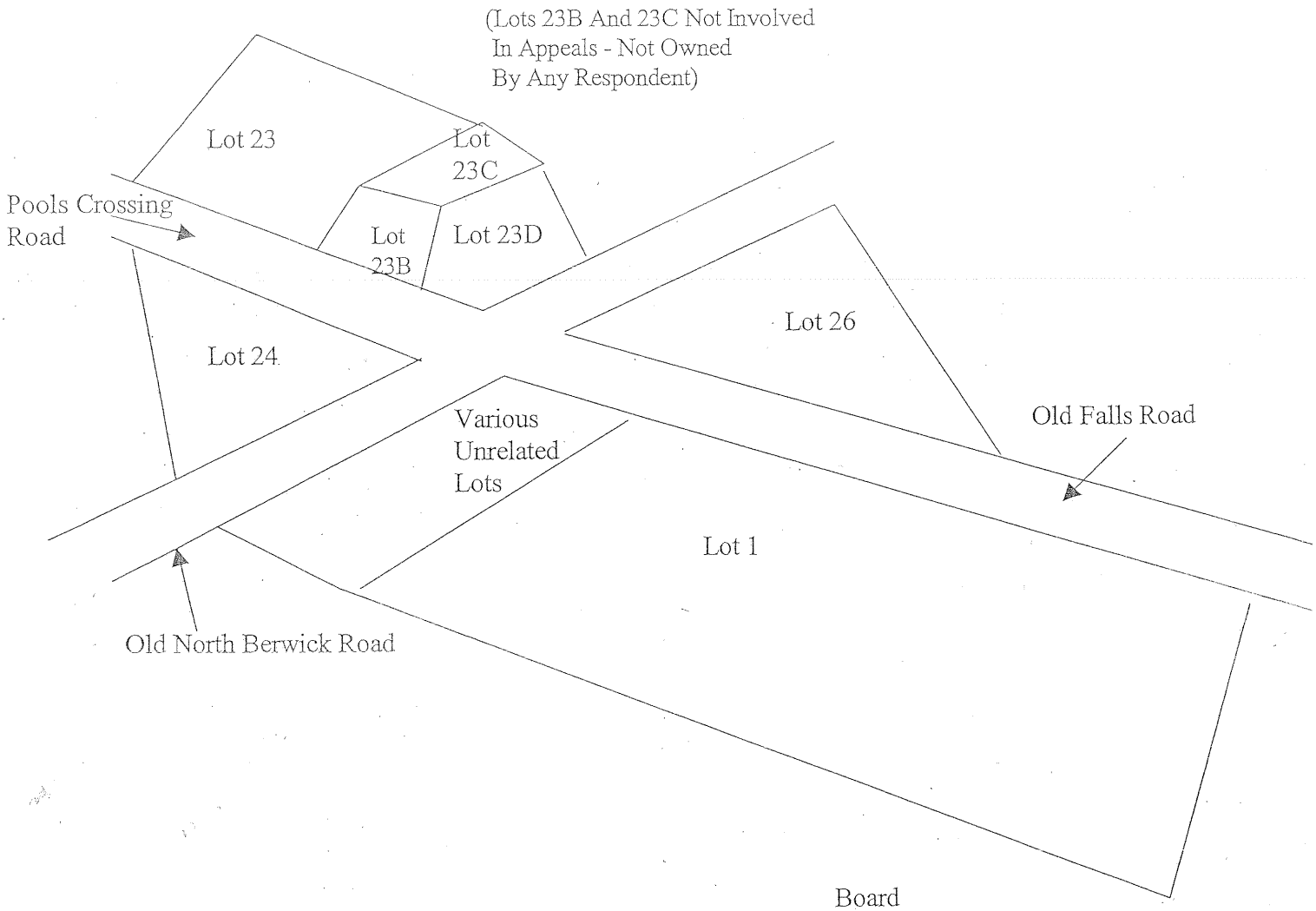
This Order does no more than decide that the Board has jurisdiction over Docket Nos. 2005-011, -012, -013, and -014. The parties concede jurisdiction in Docket No. 2005-010. We do not regard this Order as a final, appealable order. *Cf. Glenridge Development Co. v. City of Augusta,* 662 A.2d 928, 930-31 & n.6 (Me. 1995) (decision of State Board of Property Tax Review denying abatement is final agency action). If that position is erroneous, the parties may take advantage of their appeal rights pursuant to 5 M.R.S.A. §§ 11001-11008 by filing a petition for review in the Superior Court within 30 days of receipt of this Decision. If the Decision is not appealed, it shall become binding on the parties at the end of the 30-day period.

Date: May 9, 2006

Eric E. Wright

Eric E. Wright
Chairman, Panel B
State Board of Property Tax Review

APPENDIX



Parcel	Taxpayer/Owner	Board Docket Number
Lot 1	Keywood Associates	2005-010
Lot 23	John Schiavi	2005-011
Lot 23D	Schiavi Family Limited Liability Company	2005-012
Lot 24	John Schiavi	2005-013
Lot 26	John Schiavi	2005-014