

Maura M. and Gerald J. Noel, Jr.

v.

Town of Loudon

Docket No.: 11473-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$16,200 on a vacant 1-acre lot (the Property). The Taxpayers also own, but did not appeal, two other lots in the Town with a combined \$104,900 assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property is encumbered with a pond and wetlands behind the pond;
- (2) the Property is unbuildable and due to setback requirements and wetlands, it is doubtful that a functional septic system could be installed; and
- (3) the Property has a value of \$3,000-\$4,000.

The Town argued the assessment was proper because:

- (1) the selectmen have the authority to waive the 75-foot setback by special exception; and
- (2) the Property is buildable.

The Town noted there is a provision in the zoning ordinance that requires if two or more contiguous nonconforming lots are in the same ownership they merge for zoning purposes. However, the Town seldom enforces this provision. Upon board questioning, the Town commented that if this Property was combined with the Taxpayers' southern lot, the Property's assessment would be approximately \$1,000 as rear acreage.

Board's Rulings

Based on the evidence, the board finds the Property should have been assessed at only \$1,000 because the Property should have been treated as rear acreage to the Taxpayers' lot 20-76.

The board is required to view the Taxpayers' entire estate in deciding abatement appeals. Appeal of Sunapee, 126 N.H. at 217. In this case, the Taxpayers owned three lots but only appealed the Property. Nonetheless, we find the Property has merged under the merger provision of the Loudon Zoning Ordinance (§ 601.01), which passed in 1987. Under the merger provision, contiguous nonconforming lots that are in the same ownership merge if the lots are not in use for four consecutive years. The Property and lot 20-76 were both nonconforming because the minimum lot size was two acres. Thus, in 1991, the two lots merged under the zoning ordinance.

The board is required to value Property based on its highest and best legal use. Thus, given the nonconforming lot size and the Taxpayers' evidence Page 3

concerning the physical limitations on the Property, we find the Property would serve as a rear portion of lot 20-76, and thus should have been assessed at \$1,000.

If the taxes have been paid, the amount paid on the value in excess of \$1,000 on the Property (\$105,900 total assessment) shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I. The Town testified that residential land values were increased by 20% in 1994. The assessment, increased by 20%, shall be used in 1994 and for subsequent years.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

Noel v. Town of Loudon
Docket No.: 11473-91PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Maura M. and Gerald J. Noel, Jr., Taxpayers; and Chairman, Selectmen of Loudon.

Dated: March 16, 1995

Valerie B. Lanigan, Clerk

0006