Town of Shelburne Board of Abatement

NOTICE OF DECISION

On May 15, 2018, an application for tax abatement was submitted to the Town Clerk by Edward Vizvarie on behalf of himself and his wife, Jane Vizvarie, with respect to the single family residential property located at 43 Richmond Drive, SPAN # 582-183-12696 (the "Property"). The Property has an assessed value on the Town of Shelburne Grand List, as of April 1, 2018, of \$268,000.

The Applicants made the abatement request pursuant to the following categories:

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☐ Taxes or charges of person	ons who have died insolvent.	24 V.S.A. § 1535(a)	(1).
☐ Taxes or charges of person	ons who have removed from	the state. 24 V.S.A. §	§ 1535(a)(2).
☐ Taxes or charges of pers	ons who are unable to pay th	eir taxes, charges, int	erest, and / or
collection fees. 24 V.S.A. §	1535(a)(3).		
□ Taxes or charges in which □ Taxes or charges in	ch there is manifest error. 24	V.S.A. § 1535(a)(4).	
□ Taxes or charges in which □ Taxes or charges in	ch there is a mistake of the lis	sters. 24 V.S.A. § 153	35(a)(4).
☐ Taxes or charges upon re	eal or personal property lost	or destroyed during th	ne tax year. 24
V.S.A. § 1535(a)(5).			
•	vailable to certain veterans a	•	
	ns otherwise eligible for exer	-	_
	the claimant's sickness or di	•	
•	abatement; but that exemption		• •
-	ach month or portion of a mo	onth the claim is late i	iled. 24 V.S.A. §
1535(a)(6).			
	mobile home moved from th		
•	le home park land or parts the ome was sited, pursuant to 10		
Dark in which the mobile no	ine was sned, bursuant to 10	, v.s.a. g bzs/. z4 v	. 5 .A. 91.553(a)(9).

The Board of Abatement held a hearing on the application on September 24, 2018. Mr. Vizvarie, appeared for the Applicants and testified. Ted Nelson, Town of Shelburne Assessor, also appeared and testified. The Board considered the testimony of Mr. Vizvarie and the Assessor; the email messages from the Applicants; and the written materials presented by the Assessor. The Board has deliberated and issues this Decision.

Findings of Fact

The Board makes the following findings of fact.

1. Prior to April 1, 2018, the Assessor made changes to the land size of many properties in Shelburne, including the Property. The Assessor described this process in the "Property Identification & Impact Details, Questions and Answers on the Land Size Changes and

precedent for this request" document he presented in connection with this abatement application. This document states, in part:

"This year we did change the land descriptions and assessments using the current land value base set in the [sic] 2008. We took on the task of reconciling land descriptions in the Grand List to the parcel maps. Roughly a quarter of the land-size changes resulted in no change in value while approximately one half of the remainder went up in size and assessment and the balance dropped both ways."

- 2. The 2017 Grand List stated the Property's size as 0.50 acres. Following the Assessor's reconciliation process, the size was changed to 0.27 acres in the 2018 Grand List, a reduction of 0.23 acres. This changed the Grand List value from \$277,700 to \$268,000, a drop of \$9,700. Had this Grand List Value been in effect for the 2017-2018 tax year, the tax bill would have been \$180.74 less than it was.
- 3. The Applicants did not grieve the Property's assessment, or request an abatement of taxes, in the July 1, 2017-June 30, 2018, or July 1, 2016-June 30, 2017 tax years, or in the prior recent past.
- 4. The Applicants request an abatement of \$3357.01, representing the Applicant's calculation of the cumulative total of the land value tax differential from 2017 to 1991 (27 years).
- 5. The Applicants believe that the 0.23-acre reduction in land size corrected a "manifest error" in the Property's assessed land size, or was a "mistake of the Assessor. Mr. Vizvarie testified that he had no reason to know of the error prior to the change in the Property's assessed land size.

Discussion and Conclusions of Law

The Board read and reread 24 VSA § 1535(a)(4), "taxes in which there is manifest error or a mistake of the listers." The Board also read three Vermont Supreme Court decisions that have construed various aspects of § 1535: *Garbitelli v. Town of Brookfield*, 2011 VT 122; *Murray v. City of Burlington*, 2012 VT 11; and *Guntlow v. Board of Abatement*, 2014 VT 118. These decision, while informative, do not address the question before the Board: Is the overstated prior land size the type of manifest error, or a mistake of the Assessor, contemplated by the statute? It is clear that the statute gives the Board very broad discretion in making this determination. A Board of Abatement may find manifest error or a mistake of the Assessor – but choose to not abate based on the equities of the case, *Garbitelli v. Town of Brookfield*, provided it states "in detail in writing the reasons for its decision." 24 VSA § 1535(c). This discretion would appear to extend to the number of tax years to be abated, if any.

The Assessor submitted "Draft Minutes" of the Board's September 12, 2005 meeting, where the Board heard and decided the abatement request of George Nichols for his property at 7970 Spear Street. Mr. Nichols noticed that whereas a survey of his property stated it was 4.4 acres in size,

the Town tax map showed it as 3.7 acres. The Town Assessor appears to have looked at the situation and then made the change, reducing the land size by 0.70 acres. Mr. Nichols then requested abatement of the corresponding portion of taxes over the prior 20 years. The Board concluded that the request did not qualify under any of the eligibility criteria of the abatement statute (including the "manifest error or mistake of the listers" provision), and denied the request.

The Nichols decision is not binding on the Board in this abatement proceeding, but it is worth considering. The assessed land size may have been based on a survey, which would have been referenced in the deed to the property. The survey was good evidence of the size of the land, and no one – not the Town, and not Mr. Nichols, had any reason to think the survey was inaccurate. Apparently, at some later date, the Town completed a tax mapping project which showed the parcel as having less acreage. Once Mr. Nichols brought this to the attention of the Town Assessor, the Assessor concluded that the tax map was more accurate than the survey. The 2005 Board determined that the 4.4 acre land size and the subsequent adjustment of it to 3.7 acres was not the type of manifest error or assessing mistake contemplated by § 1535(a)(4).

Here, the change to the Vizvarie land size appears to have come about in a similar way, although the change was 0.23 acres and was not prompted by the property owner. (Who prompted the change does not seem to be material to the Board's analysis.) The record before the Board does not state how the Town originally set the land size. It does strike the Board that this 0.23-acre discrepancy in acreage, almost a one-half reduction in land size, is "manifest." Hence, the Board concludes that there may well have been a manifest error here. In any event the size of the discrepancy persuades the Board that this was a correction of a mistake.

The Board does not believe, however, that the circumstances of this request warrant 27 years of abatement and finds that three years of property taxes is an equitable and fair remedy for the mistake; this period of abatement is also consistent with prior Board decisions.

Decision

For the reasons articulated above, the Board concludes that the Property does qualify for abatement under 24 V.S.A. § 1535(a)(4), based on the revised land size and for the property taxes paid by the Applicant in the 2015, 2016 and 2017 tax years, plus applicable interest. The Board requests that the Town Assessor calculate that amount and that the Town Treasurer make the payment to the Applicants.

The decision was by a vote of 9-1-1: nine in favor, one opposed, and one abstaining.

I hereby certify that this is a true record of the action taken by the Board of Abatement.

/s/

Thomas A. Little

Chair, Board of Abatement Dated: November 12, 2018.

A decision of the Board of Abatement may be appealed to the Civil Division of the Superior Court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

A decision of the Board of Abatement does not affect the tax assessment for the property. A copy of this decision shall be recorded in the office of the Town Clerk and a certified copy shall be forwarded forthwith to the collector of taxes and the Town Treasurer pursuant to 24 V.S.A. § 1536.