Town of Shelburne Board of Abatement

NOTICE OF DECISION

On June 14, 2018, an application for tax abatement was submitted to the Town Clerk by Norman W. Silcox on behalf of the Norman and Betsy Silcox Trust with respect to the single family residential property located at 345 Birch Road, SPAN Number 582-183-12352 (the "Property"). The Property has an assessed value on the Town of Shelburne Grand List, as of April 1, 2018, of \$364,900.

The Applicant made the abatement request pursuant to the following categories:
☐ Taxes or charges of persons who have died insolvent. 24 V.S.A. § 1535(a)(1).
☐ Taxes or charges of persons who have removed from the state. 24 V.S.A. § 1535(a)(2).
\square Taxes or charges of persons who are unable to pay their taxes, charges, interest, and / or collection fees. 24 V.S.A. § 1535(a)(3).
☑ Taxes or charges in which there is manifest error. 24 V.S.A. § 1535(a)(4).
☐ Taxes or charges in which there is a mistake of the listers. 24 V.S.A. § 1535(a)(4).
☐ Taxes or charges upon real or personal property lost or destroyed during the tax year. 24
V.S.A. § 1535(a)(5).
□ The exemption amount available to certain veterans and their family members under 32 V.S.A. § 3802(11) to persons otherwise eligible for exemption who file a claim on or after May 1 but before October 1 due to the claimant's sickness or disability or other good cause as determined by the board of abatement; but that exemption amount shall be reduced by 20 percent of the total exemption for each month or portion of a month the claim is late filed. 24 V.S.A. § 1535(a)(6).
□ Taxes or charges upon a mobile home moved from the town during the tax year as a result of a change in use of the mobile home park land or parts thereof, or closure of the mobile home park in which the mobile home was sited, pursuant to 10 V.S.A. § 6237. 24 V.S.A. §1535(a)(9).

The Board of Abatement held a hearing on the application on September 24, 2018. Mr. Silcox, appeared for the Applicant and testified. Ted Nelson, Town of Shelburne Assessor, also appeared and testified. The Board considered the testimony of Mr. Silcox and the Assessor; the June 24 and September 17 letters from the Applicant; 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 0.70 acres. Following the Assessor's reconciliation process, the size was changed to 0.65 acres in the 2018 Grand List. This changed the Grand List value from \$364,900 to \$363,800, a drop of \$1,100. Had this Grand List Value been in effect for the 2017-2018 tax year, the tax bill would have been \$20.50 less than it was.
- 3. The Applicant 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 Applicant requests an abatement of \$526.60, representing the cumulative total of the land value tax differential from 1992 to 2017.
- 5. The Applicant believes that the 0.05 change corrected a "manifest error" in the Property's assessed land size. Mr. Silcox 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 Silcox land size appears to have come about in a similar way, although the change was 0.05 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. The testimony of Mr. Silcox, however, suggests that circa 1991, the Town changed the land size from 1 acre to .7 acres when it acquired better information about the parcel, and then repeated the process in 2018. It does not strike the Board that this discrepancy in acreage was obvious, or "manifest." Perhaps there are some professionals who can eyeball a property and estimate its acreage with fair accuracy and consistency, but it is not reasonable or fair, we think, to suggest that even such a professional could notice a 0.05-acre difference. Hence, the Board concludes that there was no manifest error here.

Nor does the Board believe that the refinement of the assessed land size by 0.05 acres is an assessing mistake within the meaning of the statute. The change in the assessed land size was a move from a previous calculation that the Applicant and the Town believed to be accurate, to a very slightly more accurate one. This simply does not rise to the level of a mistake as contemplated by the statute, in the Board's view.

Decision

For the reasons articulated above, the Board determines that the Property does not qualify for abatement under 24 V.S.A. § 1535(a)(4). The decision was by a vote of 7-2-2: seven in favor, two opposed, and two abstaining.

Attached to this Notice of Decision is the Dissent of those members opposing the decision.

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.