

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:

- 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).
- 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. 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,

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.