

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-535

JANUARY TERM, 2007

Vermont Earth Resources

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APPEALED FROM:

}

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v.

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Rutland Superior Court

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Town of Shrewsbury, Board of Civil Authority

}

and Town of Clarendon, Board of Civil Authority} DOCKET NO. 543-9-03 Rdcv

Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

Taxpayer appeals the superior court=s order upholding the Town of Shrewsbury=s assessment of his land. We affirm.

The subject property is a 233-acre tract of land that includes part of a gravel pit. Pursuant to a town-wide reappraisal, the Town assessed the property at \$108,500 in 2001. This assessment represented a reduced per-acre value based on the land having been assigned a grade factor of .6. Following the reappraisal,

the town listers continued to review the assessments of properties within the Town. In 2003, in response to a grievance by another taxpayer with a gravel pit operation, the town listers determined that the grade factor established for the subject property during the 2001 town-wide reappraisal was too low. After reviewing the contract assessor's notes and conducting their own evaluation of the grade in relation to that of comparable properties, the town listers increased the grade factor of the subject property from .6 to .9, resulting in an assessment of \$162,700. Taxpayer appealed the assessment to the board of listers, the board of civil authority, and then the superior court, claiming that the Town unconstitutionally singled out his property for reassessment. The court upheld the assessment, concluding that bringing the grade factor of the subject property into line with the grade factors of similar situated properties was a legitimate purpose that negated taxpayer's constitutional claim. On appeal, taxpayer argues that (1) the change of his property's grade factor was not the correction of an error as contemplated under 32 V.S.A. ' 4261; and (2) the Town violated the Proportional Contribution Clause of the Vermont Constitution by singling out his property for reappraisal.

Taxpayer first argues that the listers' reassignment of his property's grade factor was not the correction of an error and thus not allowed under ' 4261. That section allows town listers who find an obvious error in the grand list to correct such errors. Taxpayer contends that the listers' actions in this case were more in the nature of a reappraisal than the correction of an error. But see M.T. Associates v. Town of Randolph, 2005 VT 112, & & 1, 22, 179 Vt. 81 (characterizing town's decision to reassess previously underassessed property as correction of an error and a mistake). We need not address this contention because the instant appeal, as presented, rises or falls on taxpayer's constitutional argument. During the hearing before the superior court, one of the town listers testified that the listers had corrected an error rather than conducted a reappraisal. In its decision, the superior court did not rely on ' 4261, but rather held that the Town's correction of a mistake with respect to the subject property's grade factor was a rational basis for the decision to adjust the property's appraised value. On appeal, taxpayer argues that the Town's conduct does not come within the ambit of ' 4261; however, taxpayer does not argue that the statutory scheme prohibits the Town's actions. Thus, even assuming that the Town's conduct does not fall within ' 4261, the only question that remains is whether that conduct is prohibited under the Proportional Contribution Clause.

Beyond specific statutory mandates, Towns may reappraise as long as the result is fair and equitable, with the overall goal to value properties at 100% of market value. @ Id. at & 8. Under the Proportional Contribution Clause, every member of society is bound to contribute the member's proportion towards the expense of [society's] protection. @ Vt. Const., ch. I, art. 9. Governmental action is unconstitutional under this provision A >only if it treats similar persons differently for arbitrary and capricious reasons.= @ M.T. Associates, 2005 VT 12, &12 (quoting Williams v. Town of Lyndon, 2005 VT 27, & 7, 178 Vt. 507 (mem.)). To prevail on a constitutional claim, a taxpayer has the burden of demonstrating that the property at issue is assessed at a higher percentage of fair market value than comparable properties. @ Id. at & 13. Although town listers may not single out property for increased assessment, @ they may make adjustments for legitimate, nondiscriminatory reasons if equitably done to similarly situated properties. Id. at & 18; see Regent Care Center, Inc. v. Hackensack City, 828 A.2d 332, 340 (N.J. Super. Ct. App. Div. 2003) (although assessors may not arbitrarily single out properties for increased assessment, they have a statutory duty to monitor property values and to correct inequities). Thus, Acorrecting a mistake @ for the purpose of keeping appraisals current and equitable is a rational basis for reappraising property. M.T. Associates, 2005 VT 12, & 22; see Alexander v. Town of Barton, 152 Vt. 148, 157 (1989) (Akeeping appraisals as current as possible within the resources available by attacking the worst underassessment problem areas @ is a rational basis that serves legitimate interests).

In this case, the Town presented testimony that, (1) following its 2001 town-wide reassessment, town listers continued to review the grand list to assure that similarly situated properties were fairly and equitably assessed; (2) as the result of a claim made by another taxpayer with a gravel operation, the listers determined that the subject property was underassessed compared to similarly situated properties; and (3) after reviewing the contract assessor's notes from the 2001 town-wide reassessment and evaluating the subject property, the listers determined that the grade factor should have been set at .9 rather than .6 to bring the property in line with other similarly situated properties. Taxpayer does not contend that the reassessment of his property exceeded its fair market value or was disproportional to the assessments of other similarly situated properties. Rather, he argues only that the Town unconstitutionally singled out his property for reassessment. We find this argument unavailing because the Town has met its burden of demonstrating a rational basis for the

reassessment of his property. As the superior court concluded, bringing the grade factor of the subject property into line with the grade factors of similarly situated properties was a legitimate action not done for arbitrary or discriminatory purposes. Cf. Regent Care Center, 828 A.2d at 342 (upholding city=s reassessment of nursing home based on assessors= conclusion that property was underassessed compared to city=s other nursing home).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice