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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-387

FEBRUARY TERM, 2002

William C. Brueckner	}	APPEALED FROM:
	}	
v.	}	Washington Superior Court
	}	
Town of Moretown	}	
Town of Waterbury	}	DOCKET NOS. 445-8-98 & 527-9-98
Department of Taxes	}	
	}	Trial Judge: Matthew I. Katz
	}	
	}	

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

Taxpayer appeals from a superior court decision dismissing his consolidated appeals from decisions of the boards of civil authority for the Towns of Moretown and Waterbury. The trial court concluded that the action against Moretown was barred by principles of res judicata, and that the action against Waterbury failed to state a claim. We affirm.

Taxpayer owns real property in both Waterbury and Moretown. He appealed the 1998 property tax assessments of both properties to the respective Towns' boards of listers, then to the boards of civil authority, and finally to the superior court, which consolidated the two appeals and joined the State of Vermont because of taxpayer's constitutional challenges. The appeals raised two fundamental constitutional issues: First, taxpayer claimed that the real property tax scheme is unconstitutional on its face and as applied because it allows towns to measure fair market value by means other than arms-length sales transactions, resulting in disproportionate taxation in violation of Chapter I, Article 9 of the Vermont Constitution (proportional contribution) and the Fourteenth Amendment of the United States Constitution. Second, he claimed that " giving property tax breaks" to certain individuals and corporations violated the equal protection, due process, and takings clauses of the United States and Vermont Constitutions.

The State and the Town of Moretown moved to dismiss, asserting that taxpayer had failed to state a claim on which relief could be granted against either Town, and that the claims against Moretown were res judicata. The court agreed with both contentions, and therefore dismissed both appeals. This appeal followed.

As to the Moretown appeal, the trial court noted that taxpayer had previously appealed his 1996 Moretown tax assessment to the State Appraiser and then to this Court, which upheld the appraisal. See Bruekner v. Town of Moretown, No. 96-627 (Jul. 31, 1998). Under 32 V.S.A. § 4468, once an appraisal relating to real estate is fixed following an appeal to the State Appraiser or the court, "[t]he appraisal so fixed by the director or the court shall become the basis for the grand list of the taxpayer for the year in which the appraisal is taken and . . . for the two next ensuing years." Thus, absent any material alteration to the property or a general reappraisal of all taxable real estate within the next two years, the initial appraisal cannot be relitigated under res judicata principles. See City of Barre

v. Town of Orange, 139 Vt. 437, 439 (1981) (noting that once 1971 appraisal was

determined on appeal, it could not normally be relitigated for next two years, but holding that townwide reappraisal allowed new challenge). Accordingly, taxpayer's challenge to his 1998 assessment was barred. Although we declined to reach taxpayer's broad facial challenge to the property tax statutes in the earlier appeal, noting that the issue was outside the State Appraiser's jurisdiction, the doctrine of res judicata applies to issues that were or could have been adjudicated

earlier. See Lamb v. Geovjian, 165 Vt. 375, 380 (1996). Taxpayer here could have challenged the 1996 assessment directly to the superior court, and raised the constitutional claims in that venue. Accordingly, we conclude the trial court correctly dismissed the Moretown appeal on res judicata principles.

Taxpayer also contends the court erred in dismissing the Waterbury appeal, noting at the threshold that the motion was filed by the State. The motion addressed the merits of the constitutional claims against Waterbury, and formed a proper basis for the court's ruling. In its decision, the court correctly observed that assessments need not be based on sales price, that different methods may be utilized to determine fair market value, and that so long as comparable properties are assessed at the same equalization ratio, utilizing different methods does not per se violate Article 9 or the Fourteenth Amendment. See Sondergeld v. Town of Hubbardton, 150 Vt. 565, 567 (1988). The court also correctly rejected taxpayer's as-applied constitutional challenge. Although taxpayer alleged substantial disparities between the assessed value of certain properties within the Towns and their sale value, and disparities between towns, these alleged disparities do not demonstrate injury to taxpayer himself, and therefore fail to establish standing to assert the claims. See Parker v. Town of Milton, 169 Vt. 74, 77 (1998) (standing requirement turns on whether plaintiff is suffering particularized injury to protected legal interest).

Taxpayer also argued below that the Towns' practice of "giving tax breaks" violated his constitutional rights. Although it does not appear that taxpayer has renewed this claim in his brief on appeal, we conclude that it was properly dismissed. First, the amended appeal to superior court did not challenge any particular tax break or exemption, and therefore was insufficient to state a claim or establish taxpayer's standing. See Limoge v. People's Trust Co., 168 Vt. 265, 274 (1998) (pleading must give fair notice of claim and grounds upon which it rests). The trial court also correctly observed that municipalities are generally empowered to grant tax exemptions, so long as there is a rational basis for the exemption. See Caverly-Gould Co. v. Village of Springfield, 83 Vt. 396, 403 (1910). Accordingly, we discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

_____
James L. Morse, Associate Justice

_____
Ernest W. Gibson III, Associate Justice (Ret.)
Specially Assigned

_____
Frederic W. Allen, Chief Justice (Ret.)
Specially Assigned