

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

ODESSA NATIONAL)	
GOLF COURSE LLC,)	
)	
Appellant,)	
)	
)	
v.)	C.A. N13A-05-001 PRW
)	
NEW CASTLE COUNTY)	
OFFICE OF FINANCE,)	
)	
Appellee.)	
)	

Submitted: December 17, 2013
Decided: March 14, 2014

Upon Appeal from the Board of Assessment Review.
REVERSED, IN PART, AND REMANDED.

OPINION AND ORDER

Richard A. Forsten, Esquire (argued), and Michael A. DeNote, Esquire, Saul Ewing LLP, Wilmington, Delaware, Attorneys for Appellant.

Julie M. Sebring, Esquire, and Wilson B. Davis, Esquire (argued), New Castle County Office of Law, New Castle, Delaware, Attorneys for Appellees.

WALLACE, J.

I. INTRODUCTION

In September 2011, Appellant Odessa National Golf Course LLC (“Odessa National”) filed an appeal of the New Castle County Office of Finance’s (the “County Finance Office”) tax assessment, which valued Odessa National’s property at \$5.4 million.¹ The New Castle County Board of Assessment Review (the “Board”) heard Odessa National’s appeal of the County Finance Office’s tax assessments,² and at that hearing denied the appeal.³ In its later written decision, the Board purportedly rejected Odessa National’s appeal on two grounds: (1) Odessa National had not filed the proper application to qualify for a tax exemption; and (2) Odessa National had not submitted sufficient evidence to demonstrate over-assessment.⁴ Following the Board’s decision, Odessa National filed this timely appeal.⁵

Because the Court cannot say, on the record presented here, that the Board’s decision was based on substantial evidence, or was otherwise the

¹ Odessa National filed a revised appeal in January 2012.

² See DEL. CODE ANN. tit. 9, § 1318 (2011) (Office of Finance assessments are appealable to the Board of Assessment).

³ See *In re Odessa Nat’l Golf Course LLC*, Board of Assessment Review of New Castle County Docket No. 1770 (April 3, 2013) (cited hereinafter as “Board Dec. at ___”).

⁴ *Id.* at 5.

⁵ DEL. CODE ANN. tit. 9, § 8312(c) (2013) (decisions of the Board are appealable to the Superior Court)

product of an orderly and logical deductive process, the Board of Assessment Review's decision is **REVERSED, IN PART**, and this matter is **REMANDED** for proceedings consistent with this Opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

After approximately five years of site improvement work on the property, the New Castle County Assessment Division assessed Odessa National's golf course (the "Golf Course") at \$5,392,100 in June, 2011. The Golf Course is bound by a deed restriction: while operating as a golf course, it must be open to public use; if the Golf Course ceases to exist, the 284 acres that comprises it will revert to "open space in perpetuity."⁶ Odessa National's income and expense figures, according to a September 2011 balance sheet, demonstrated that the Golf Course had a net loss of \$428,766.94. Odessa National's owner/agent appealed the supplemental assessment *pro se* in September 2011, indicating on the appeal form his

⁶ See Ex. C to Odessa National's Op. Brf. at 52, July 12, 2013 (Record Major Subdivision Plan Submission for Odessa National Golf Club & Residential Community). The full text of the restriction states: "The golf course property is hereby deed restricted to remain an active golf course. If the golf course use ceases to exist for any reason, the golf course property shall remain as 284.464 acres of open space in perpetuity. No other open space use shall be permitted unless approved by County Council. So long as the golf course is open and operating as a golf course, the golf course shall be open to public use in perpetuity, subject, however, to such rules and regulations which the owner or operator of the golf course may impose, including payment of fees for such use and including membership criteria in addition to public use." *Id.*

belief that because of the deed restriction, and because the Golf Course was operating at a net loss, the Golf Course should have a \$0 assessed value.

The Board held a hearing on Odessa National's appeal of its supplemental assessment on March 20, 2013. By this time, Odessa National had obtained counsel and discovered the existence of an independent appraisal of the Golf Course performed by a bank in September of 2012, indicating a current market value of \$1,975,000. This appraisal was sent to the Board in February 2013, prior to the hearing, pursuant to an obligation to provide the Board with copies of any appraisal reports.⁷ At the hearing, Odessa National presented two alternative arguments: (1) the supplemental assessment was a substantial overvaluation given the bank's appraisal, the Golf Course's net loss, and comparable properties' assessments; and (2) because of the deed restriction, the Golf Course should be tax exempt as public open space under Title 9, Section 8106(b) of the Delaware Code. The Board, however, refused to hear certain probative evidence relating to the first argument, stating, for instance, that the bank's appraisal was not timely

⁷ The first page of the appeal form itself sets forth this requirement. Odessa National argues that it should have been allowed to supplement the appeal form with the bank's subsequent appraisal under the Board's Rules allowing amendments "for good cause." *See* Rules of Procedure of the Board of Assessment Review of New Castle County State of Delaware, (hereinafter "Board Rule") VIII.5.

submitted.⁸ And having considered Odessa National’s appeal to be merely an application for exemption, having stated that Odessa National had failed to file the proper application for tax exempt status, and having found that the exemption issue was not before it, the Board denied Odessa National’s appeal.⁹ This timely appeal followed.

II. STANDARD OF REVIEW

Upon appeal to this Court, a Board of Assessment Review’s decision “shall be prima facie correct,” and the burden rests with the appellant to show the Board acted “contrary to law, fraudulently, arbitrarily or capriciously.”¹⁰ Reversal is warranted where “the Board’s findings are clearly wrong and its conclusions [are] not the product of an orderly and logical deductive process.”¹¹ The Court’s role in assessing the merit of any

⁸ See Board Rule VI.6(c) (“The appellant shall present testimony, including any legally admissible documentation or other evidence, in support of a lower assessment, so long as such evidence was disclosed in the appellant’s appeal form.”).

⁹ Board Dec. at 5; Ex. C to Odessa National’s Op. Brf. at 92-94, July 12, 2013 (Transcript of Hearing, *In re Odessa Nat’l Golf Course LLC*, Board of Assessment Review of New Castle County Docket No. 1770 (April 3, 2013)).

¹⁰ DEL. CODE ANN. tit. 9, § 8312(c) (2013).

¹¹ *Tatten Partners, L.P. v. New Castle County. Bd. of Assessment Review*, 642 A.2d 1251, 1256 (Del. Super. Ct. 1993) (“The reviewing court is not to reverse if it finds that the Board relied in part on incompetent evidence . . .”), *aff’d*, 1994 WL 144302 (Del. Apr. 21, 1994) (quoting *Rodney Square Investors, L.P. v. Bd. of Assessment Review of New Castle County*, 1983 WL 482333, at *1 (Del. Apr. 7, 1983)).

appeal from the Board has been described as follows:

The Court must consider first whether the Board's factual findings are supported by substantial evidence. Then the Court must decide if the Board applied the facts as it found them to be, according to the law as the Court finds it to be. While the Court may not reweigh the evidence, the Court must consider the law on its own.¹²

III. THE PARTIES' CONTENTIONS

On appeal, Odessa National claims that the Board ignored Odessa National's evidence of over-assessment and refused to hear testimony Odessa National prepared for presentation at the hearing. It further claims there is no justification for the \$5.4 million assessed value of the golf course, a figure Odessa National argues is (1) more than double its fair market value and (2) greater than the assessed value of every other golf course in New Castle County. Seeking reversal, Odessa National argues the Board's decision was arbitrary and capricious.

The County argues the Board correctly denied Odessa National's assessment appeal. In its view, because Odessa National raised a question not properly before the Board – whether Odessa National was exempt from taxation – the County argues the Board correctly denied Odessa National's appeal.

¹² *Migration Dialogue, Inc. v. New Castle County Bd. of Assessment Review*, 1999 WL 464039, at *1 (Del. Super. Ct. May 28, 1999).

IV. DISCUSSION

A. This Court cannot declare Odessa National exempt under 9 Del. C. § 8106A.

There is little doubt that this Court has both statutory¹³ and inherent authority to decide cases on equitable principles and to grant equitable remedies.¹⁴ But, although it may have the power in certain circumstances, the Court cannot exercise its discretion to grant Odessa National the equitable relief – declaratory judgment on its claimed tax or assessment exempt status – that it seeks here. Here the applicable statutes clearly require that Odessa National apply for exemption by March 1 of the year preceding the one for which it wished to claim an exemption.

This dispute requires construction of the application procedures set forth in § 8106A of Title 9 of the Delaware Code, specifically as they apply to those tax exemptions recognized under § 8106(b). Section 8106(b) states, in relevant part:

No real property which has been required by New Castle County to be set aside for public parkland or public open

¹³ See, e.g., DEL. CODE ANN. tit. 10, § 542(c) (2013) (“The Court shall minister justice to all persons, and exercise the jurisdictions and powers granted it, concerning the premises, according to law and equity.”); § 6501 (granting “courts of record within their respective jurisdictions” the “power to declare rights, status and other legal relations . . .”).

¹⁴ See, *USH Ventures v. Global Telesys. Group, Inc.*, 796 A.2d 7 (Del. Super. Ct. 2000) (noting the powers of this Court to grant equitable relief are substantial).

space during the zoning or subdivision process shall be liable to taxation and assessment for public purposes by the county or other political subdivision of the State or county.¹⁵

Section 8106's companion provision, § 8106A, sets forth in pertinent part:

(a) In New Castle County, no exemption from taxation for property owned by a religious, educational, or charitable agency or for a specific organization listed in this subchapter shall be allowed except on written application therefor, on a form prescribed and provided by the New Castle County Land Use Department.

(b) The owner shall file an application for exemption under this subchapter with the Assessment Division of New Castle County by March 1 of the fiscal year immediately preceding the fiscal year for which the exemption is sought.

* * *

(d) No application shall be required of governmental entities entitled to exemption under this subchapter.¹⁶

Odessa National argues that it is entitled to an automatic tax exemption under § 8106(b) because the Golf Course is, according to Odessa National, currently subject to a public open space restriction. This tax exemption, it claims, is different from the exemptions granted to property owned by governmental, religious, educational, and charitable agencies

¹⁵ DEL. CODE ANN. tit. 9, § 8106(b) (2013).

¹⁶ DEL. CODE ANN. tit. 9, § 8106A (2013).

under § 8105, and other specific organizations listed in § 8106(a). Odessa National says that, because the application requirement for tax exemptions set forth in § 8106A(a) do not specifically mention land required to be set aside for open space, under the principle of *expresso unius est exclusio alterius*, the General Assembly did not intend for open space property to be subject to the application requirement. The County, on the other hand, maintains that reading the entirety of § 8106A shows that the General Assembly only intended government entities to be excepted from the application form requirement.

When interpreting a statute, the Court’s role is to determine and give effect to the legislature’s intent.¹⁷ If that intent is clearly reflected by the statute’s unambiguous language, the language itself controls.¹⁸ “An unambiguous statute precludes the need for judicial interpretation,”¹⁹ and the Court, when faced with a non-ambiguous statute, simply applies the statutory language to the facts of the case before it.²⁰

¹⁷ *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 932 (Del. 2007).

¹⁸ *Sandt v. Del. Solid Waste Auth.*, 640 A.2d 1030, 1032 (Del. 1994) (citing *Spielberg v. State*, 558 A.2d 291, 293 (Del. 1989)).

¹⁹ *LeVan*, 940 A.2d at 932-33.

²⁰ *Ross v. State*, 990 A.2d 424, 428 (Del. 2010).

A court may look behind the statutory language itself only if the statute is ambiguous.²¹ But a statute is not rendered ambiguous simply because parties disagree about its meaning.²² Rather, a statute is ambiguous if “it is reasonably susceptible to different conclusions or interpretations” or if “a literal interpretation of the words of the statute would lead to an absurd or unreasonable result that could not have been intended by the legislature.”²³

There is no ambiguity to resolve here. Section 8106A governs applications for tax exemptions for those entities that may be due such an exemption under *any* provision of Subchapter I of Chapter 81 of Title 9. By reading Subchapter I *in pari materia* as general provisions of the limitations upon taxing power, the General Assembly’s purpose in providing specific requirements for those applying for a tax exemption is clearly reflected by the plain language of § 8106A. Section 8106A(a) creates the separate requirement for religious, educational, or charitable agencies in New Castle County to use a form designated by the New Castle County Land Use Department. All other entities entitled to a tax exemption under Subchapter

²¹ *Id.*

²² *Id.*

²³ *Leatherbury v. Greenspun*, 939 A.2d 1284, 1288 (Del. 2007).

I of Chapter 81 follow the procedure set forth in § 8106A(b).²⁴ This requires them to file an application for exemption with the Board in writing prior to March 1 of the year preceding that for which they seek an exemption.

The General Assembly’s intent to require religious, educational, charitable agencies and other specified organizations entitled to tax exemptions – separate from other entities – to use a designated form is clearly reflected in the statute’s language.²⁵ And its intent to exempt governmental entities from any such application requirement is equally clear.²⁶ But under the plain language of § 8106A(b), anyone else seeking a Subchapter I-defined exemption must file an application with the Board prior to March 1 of the year preceding the year for which they seek an exemption. Neither § 8106A(a) nor (d) applies to Odessa National; section 8106A(b) does.

Even if one assumed that the use of the phrase “*the* owner” in § 8106A(b) introduces some ambiguity into 8106A, Odessa National still must follow the exemption application process because the provisions of

²⁴ For example, the General Assembly contemplated tax exemptions, under certain circumstances, for mobile homes pursuant to § 8104, motion picture studios pursuant to § 8107, off-street parking facilities pursuant to § 8109, etc.

²⁵ DEL. CODE ANN. tit. 9, § 8106A(a) (2013).

²⁶ *Id.* at § 8106A(d).

Subchapter I must still be read as a whole. The law favors a sensible and rational statutory construction that avoids absurd results.²⁷ When a statute is ambiguous, the court must “consider it as a whole and . . . read each section in light of all the others to produce a harmonious whole.”²⁸ Furthermore, the court should “look for guidance to its apparent purpose and place it as part of a broader statutory scheme.”²⁹ As the purpose of § 8106A is to provide an exemption application process for entities exempt under Subchapter I as a whole, it would lead to absurd results to read it as creating a gap only for land designated as open space.

This case itself demonstrates the propriety of a written application for the type of exemption sought here; that is, an exemption based on a particular use of the land. There is a real question as to whether the “public open space” exemption is applicable while the property still operates as a for-profit (albeit currently unprofitable) business venture open to the public. It would seem that the exemption may only become applicable once the golf course use ceases and the property, by restriction, then becomes “284.464

²⁷ See *One-Pie Investments, LLC v. Jackson*, 43 A.3d 911, 914 (Del. 2012) (citing JABEZ GRIDLEY SUTHERLAND & JOHN LEWIS, STATUTES & STATUTORY CONSTRUCTION, 2A § 45:12 (7th ed. 2011); *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust, ex rel. Christiana Bank & Trust Co.*, 28 A.3d 1059, 1071 (Del. 2011).

²⁸ *PHL Variable*, 28 A.3d at 1070.

²⁹ *Id.*

acres of open space in perpetuity,” subject to a provision that “[n]o other open space use [of the land] shall be permitted unless approved by County Council.”³⁰ And that question should first be presented under a § 8106A application and determined under the prescribed administrative processes.³¹ Thus, this Court cannot provide Odessa National with a declaratory judgment that it is automatically tax exempt pursuant to § 8106(b).

B. The Board erred in limiting the March 20, 2012 hearing to the question of tax exemption.

The one paragraph “Decision of the Board” was based almost exclusively on Odessa National’s exemption argument.³² In its decision, the Board recharacterized Odessa National’s first argument for a zero valuation (originally filed *pro se*) as “an application for an exemption.”³³ However, Odessa National’s decision to include its exemption argument in its the tax assessment appeal did not relieve the Board of its obligation to properly

³⁰ See Ex. C to Odessa National’s Op. Brf. at 52, July 12, 2013 (Record Major Subdivision Plan Submission for Odessa National Golf Club & Residential Community).

³¹ It would appear that the only New Castle County entities that need not submit an application for exemption are governmental entities. See DEL. CODE ANN. tit 9, § 8106A(d)(2013).

³² Board Dec. at 5.

³³ *Id.*

consider Odessa National’s overvaluation claim;³⁴ a claim for which Odessa National was prepared to present evidence. Even though Odessa National submitted an independent appraisal as evidence of overvaluation and argued that it had “good cause” to submit it after the appeal had been filed, the Board acknowledged the existence of but never addressed this evidence. Also there is nothing in the record that demonstrates the Board’s consideration of other probative evidence of overvaluation. In short, there is simply not enough in the Board’s scant decision for this Court to find that its rejection of Odessa National’s overvaluation claim was based on substantial evidence and was the result of an orderly and deductive process. For those reasons, the appeal is remanded for the Board to consider the merits of Odessa National’s overvaluation claim.

³⁴ See DEL. CODE ANN. tit. 9, § 1318 (2011) (“The Board *shall* perform the following functions: (1) Hear appeals from any property owner who alleges that the property owner’s property has been improperly assessed for purposes of taxation; (2) Following the hearing of any property owner and, in light of the facts produced at such hearing, determine whether the assessment is correct.”)(emphasis added); see also *Kimberton Apartment Ass’n., L.P. v. New Castle County Bd. of Assessment Review*, 1992 WL 1485434, at *3-4 (Del. Super. Ct. Mar. 6, 1992)(noting that right to hearing is “not unconditional,” and Board is empowered to enforce certain procedural requirements, but also that “[i]t is fundamental that government must exercise the taxing power with utmost fairness and that citizens, individually or as corporate entities, have full recourse to be heard when they have reason to feel they are being treated unjustly”).

V. CONCLUSION

For the forgoing reasons, the Board of Assessment Review's decision is **REVERSED, IN PART**, and this matter is **REMANDED** for proceedings consistent with this Opinion.

IT IS SO ORDERED.

/s/ Paul R. Wallace

Paul R. Wallace, Judge

Original to Prothonotary
cc: Counsel via File & Serve