

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

MARK PURPURA, : C.A. No. S14A-07-006 RFS
Appellant :
 :
 :
v. :
 :
 :
THE COMMISSIONERS OF THE :
CITY OF REHOBOTH BEACH, :
Appellee :

MEMORANDUM OPINION

*Upon Appellant’s Appeal from the Decision of the Commissioners of the City of Rehoboth Beach Sitting as the Court of Appeals. **DENIED.***

Date Submitted: December 24, 2014

Date Decided: March 30, 2015

Seth L. Thompson, Sergovic, Carmean & Weidman, P.A., 142 East Market Street, P.O. Box 751, Georgetown, Delaware 19947, Attorney for Appellant

Stephen E. Smith, Baird Mandalas Brockstedt, LLC, 6 South State Street, Dover, Delaware 19901, Attorney for Appellee

STOKES, J.

INTRODUCTION

Presently before the Court, Appellants are appealing a decision rendered by the Commissioners of the City of Rehoboth Beach (“City”) regarding a tax assessment of the subject property. Appellants request judicial relief resulting in the entry of an order declaring the assessment of the subject property void. Further, Appellants petition this Court to utilize the assessment conducted by a private assessor as opposed to permitting the City to conduct a subsequent re-assessment of the property. For the reasons which follow, the assessment is void as a matter of law and the remaining issues are subsequently mooted.

FACTS AND PROCEDURAL POSTURE

City hired Property Tax Associates of Delaware Valuations (“PTA/DelVal”) to evaluate the tax burdens present in Rehoboth Beach. City sought to achieve a more accurate and equitable distribution of the tax burden among the current property owners. City initiated a City-wide assessment even though the Charter amendment enabling the re-assessment was not signed by the Governor; House Bill 313 of the 147th General Assembly was not signed into law until August 1, 2014. Initially, City believed the Charter amendment was effective months prior to August of 2014. Based on this erroneous belief, City commenced the assessment.

PTA/DelVal created a computer valuation model by undertaking a comprehensive re-assessment of properties in the area. City proceeded to evaluate the property according to the Charter amendment, by allowing a Tax Assessor as opposed to a Board of Assessment, value the subject property. Based on this model, the Appellant's property assessment rose from \$25,250 to 1.53 million.

Appellant filed an appeal with City following an informal appeal process. In the formal appeal, a determination as to whether the subject property was substantially overvalued was sought. City reduced the assessed value of the property based on a reduction in lot size; however, Appellants continue to dispute the assessment value of the property.

Appellant represented the subject property should be valued at \$1.32 million based on an expert's computation. This figure is derived from utilizing an alternative discount rate of eighty-five percent, as opposed to the City adopted rate of fifty percent, to apply to land values with square footage in excess of 5,000 feet.

At this juncture, City concedes the assessment was contrary to the Charter because City began the tax assessment via a Tax Assessor, as opposed to a Board of Assessment, prior to the signature of the Governor. Also, City seeks to void the current re-assessment based on the above-mentioned failure to comply with the law. Appellant shares this position and seeks to set aside the assessment.

However, Appellant seeks to replace both the recent assessment and the previous assessment with a new assessment as appraised by their expert, Mr. Piper. Mr. Piper's assessment values the subject property at \$1.32 million. Further, Appellant contends this amount should not be subject to re-assessment under a supplemental assessment absent a City-wide assessment or substantial improvement on the property. Alternatively, City seeks to re-assess the property in compliance with the City charter at a later time.

STANDARD OF REVIEW

The standard of review on appeal from a decision rendered by the Commissioners of the City of Rehoboth Beach regarding a property assessment of record is limited to the correction of errors of law and a determination of whether substantial evidence exists in the record to support the findings of fact.¹ Substantial evidence must be more than a mere scintilla but may be less than a preponderance of evidence.² Relevant evidence sufficient for a reasonable mind to accept as adequate to support a conclusion is deemed substantial evidence.³ A reviewing court must affirm a decision supported by substantial evidence, even if

¹ *Shahin v. City of Dover, Bd. of Assessment*, 2011 WL 704490, at *2 (Del. Super. Feb. 28, 2011) *aff'd sub nom. Shahin v. City of Dover*, 31 A.3d 77 (Del. 2011); *Elsmere Park Club Ltd. P'ship v. Court of Assessment Appeals of Town of Elsmere*, 1991 WL 17995, at *1 (Del. Super. Jan. 28, 1991).

² *Mesa Commc'n Grp. v. Kent Cnty. Bd. of Adjustment*, 2000 WL 33110109, at *3 (Del. Super. Oct. 31, 2000).

³ *Mellow v. Bd. of Adjustment of New Castle Cnty.*, 565 A.2d 947, 954 (Del. Super. 1988), *aff'd*, 567 A.2d 422 (Del. 1989).

such court would have decided the case differently if it had come before it in the first instance.⁴

The Commissioners' decision is deemed *prima facie* correct and the burden of persuasion is on the party seeking to overturn the decision.⁵ In order to rebut the presumption, substantial competent evidence must be presented to this Court demonstrating the Commissioners, sitting as the Court of Appeals, "acted contrary to law, fraudulently, arbitrarily, or capriciously"⁶ by upholding the determination that Appellant provided insufficient evidence of substantial overvaluation.⁷

DISCUSSION

With these principles in mind, actions taken by City were contrary to law as evidenced by City's concession.⁸ As such, City may not enforce the newly assessed value against Appellant.⁹ Thus, this Court need not address Appellant's remaining contentions. This Court need only address what should be the proper remedy given City's mistake.

⁴ *Mellow*, 565 A.2d at 956.

⁵ *Seaford Associates, L.P. v. Bd. of Assessment Review*, 539 A.2d 1045, 1047–48 (Del.1988).

⁶ *Bd. of Assessment Review v. Stewart*, 378 A.2d 113, 116 (Del.1977); Del. Code Ann. tit. 9, § 8312(c).

⁷ *Fitzsimmons v. McCorkle*, 214 A.2d 334, 337 (Del.1965).

⁸ *See*, Appellee's Answering Br. at 1, 15.

⁹ *See generally e.g., J. Ehrlich Realty Co. v. City of Dover*, 124 A.2d 732 (Del. Ch. 1956).

City suggests the proper remedy is to void the recent assessment and leave open the possibility of re-assessing the subject property.¹⁰ On the other hand, Appellant seeks to void City's decision and modify the property assessment to reflect the value conducted by their expert and preventing supplementary assessments.¹¹ Appellant argues Delaware law¹² supports utilizing a valuation presented by their expert's private assessment rather than voiding the reassessment and allowing for a supplemental assessment at a later date.¹³ I disagree.

Upon review of the parties' submissions, I find City's rejection of Appellant's private assessment otherwise valid. Unlike the cases relied upon by Appellant,¹⁴ in this case City neither permitted this matter to go forward uncontested, nor was the record void of evidence that the governing body either failed to consider the evidence presented by Appellant or lacked a logical basis for reaching their conclusions.¹⁵ In fact, City provided competent evidence contesting Appellants assertions, considered the competent evidence presented by Appellant,

¹⁰ See, Appellee's Answering Br. at 20.

¹¹ Appellants Op. Br. at 32.

¹² See, *New Castle Cnty. Dep't of Fin. v. Teachers Ins. & Annuity Ass'n*, 669 A.2d 100, 101 (Del. 1995); *Tatten Partners, L.P. v. New Castle Cnty. Bd. of Assessment Review*, 642 A.2d 1251, 1263 (Del. Super. 1993) *aff'd sub nom. New Castle Cnty. v. Tatten Partners, L.P.*, 647 A.2d 382 (Del. 1994).

¹³ Appellant's Br. at 31–32.

¹⁴ *Teachers Ins. & Annuity Ass'n*, 669 A.2d at 101 (providing background information about how in this case the City did not present any evidence of the property's value"); *Tatten Partners, L.P.*, 642 A.2d at 1263 (describing how the record in this case was "void of any indication that the Board considered" competent evidence and concluding the adjustments made by the board were arbitrary as a result).

¹⁵ See generally, Appellee's Answering Br. at 17–19.

and ultimately reached a logical conclusion as supported by the minimal disparity between Mr. Piper's appraisal and City's appraisal.¹⁶ As a result, City's actions, apart from instituting the assessment too early and thus contrary to law, were not facially unreasonable.¹⁷

In summary, the recent assessment is void as a matter of law and the additional issues are mooted. Moreover, in the present context substituting a private assessors' evaluation for the City's is not the proper remedy to rectify the City's error. Thus, Appellant's property will remain assessed presently at the value prior to the re-assessment, which is \$25,250. The property may be subject to reassessment if City elects to undertake a re-assessment of the subject property in accordance with City's charter.¹⁸ As such, the determination as to what value the subject property will be assessed at a future date will primarily be a legislative issue.

¹⁶ The assessments are identical in nearly all substantial aspects but one, the rate to assess property over 5,000 square feet. Appellee's Answering Br. at 2. The Piper Appraisal utilized a discount rate at fifteen percent whereas City selected a rate of fifty percent because this rate was the most appropriate for the City-wide model. *Id.* The rate was selected by City based on 18 months of historical data and produced property values within two percent accuracy of the market. *Id.* City considered Mr. Piper's appraisal and later rejected it because City already selected a discount rate for square footage in excess of 5,000 feet. *Id.* For these reasons, the discount rate was not arbitrarily selected, nor was the City's decision to adhere to the rate illogical. *Id.*

¹⁷ Nothing said is intended to have claim preclusion effect should there be future litigation. The Court declines to become involved as a fact finder given the competing positions below.

¹⁸ City is permitted under either Section 23 or Section 23a to re-assess the property pursuant to the current Charter.

For all of the foregoing reasons, Appellants' appeal is **DENIED**.

IT IS SO ORDERED

/s/ Richard F. Stokes

Richard F. Stokes, Judge

cc: Prothonotary