

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

**RRHC WILMINGTON, LLC, MIM V, )  
LP, CHIPPEY STREET ASSOCIATES, )  
AND COMMERCE ASSOCIATES LP, )**

**Appellants,**

**v.**

**C.A. No. N13A-08-004 MJB**

**NEW CASTLE COUNTY OFFICE OF )  
FINANCE AND NEW CASTLE )  
COUNTY BOARD OF ASSESSMENT )  
REVIEW, )**

**Appellees.**

Submitted: February 19, 2014  
Decided: May 30, 2014

*Upon Appellants' Appeal from the Board of Assessment Review,*  
**AFFIRMED.**

**OPINION**

Melvyn I. Monzack, Esquire, and Michael C. Hochman, Esquire, Monzack Mersky McLaughlin and Browder, P.A., Wilmington, DE, *Attorneys for Appellants.*

Wilson B. Davis, Esquire, for the New Castle County Board of Assessment Review, and Brian J. Merritt, Esquire, for the New Castle County Office of Finance, New Castle, DE, *Attorneys for Appellees.*

**BRADY, J.**

## **I. INTRODUCTION**

RRHC Wilmington, MIM V, LP, Chippey Street Associates, and Commerce Associates LP (collectively, “Appellants”), which are various owners of condominium units located in One Commerce Center, filed the instant appeal from a decision of the New Castle County Board of Assessment Review on November 22, 2013. On appeal, the Court must determine whether the Board’s decision to uphold the tax assessments for the Appellants’ respective properties, all units of One Commerce Center, was proper. Appellee, New Castle County Office of Finance (“County”), set the assessments at issue. Appellee, New Castle County Board of Assessment Review (“Board”),<sup>1</sup> heard the appeals from the Appellants regarding the alleged improper assessment, but ultimately decided to uphold the County’s assessment.

Appellants appeal the Board’s decision to this Court, contending the Board’s decision should be reversed, because: (1) the Board did not satisfy the constitutional requirements of uniformity; (2) Delaware law requires a reduction of the Appellants’ tax assessments; and (3) the County improperly transferred the power to conduct tax assessments from the Department of Land Use to the Department of Finance, in a way inconsistent with the authority granted by the General Assembly. Appellants submitted their Opening Brief, asserting the above arguments, on November 22, 2013.

Appellees filed their Answering Brief on January 10, 2014, through which the County contends that the evidence offered by Appellants was considered by the Board, but was insufficient to overturn the County’s assessment, because: (1) a “comparable assessments” approach, which Appellants relied on, is not an accepted method of valuation; (2) Appellants did not present a cognizable sales comparison approach; and (3) Appellants’ income approach was not paired with another accepted method of valuation. Finally, Appellees assert that the

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<sup>1</sup> The Board and County shall be collectively referred to herein as “Appellees.”

Appellants' transfer-of-power argument cannot be raised for the first time on appeal and, even if the issue were properly before the Court, Appellants' contention has no merit, because 9 *Del. C.* § 1122 provides the County Executive with extensive power to restructure the County government.

Appellants Reply Brief was filed on January 31, 2014, and reiterates the arguments made in the Opening Brief, contending reversal of the Board's decision is warranted. The matter was assigned to this Court on February 19, 2014, and there was no supplemental hearing or argument. Upon consideration of the parties' briefing and the record below, the Court finds that the Appellants have failed to satisfy their burden to overturn the Board's decision, because they failed to establish that the Board acted contrary to law, fraudulently, arbitrarily, or capriciously in upholding the County's tax assessment. Accordingly, the Board's decision is **AFFIRMED**.

## **II. FACTS**

### **A. Background**

New Castle County assessed property taxes for eight commercial units in One Commerce Center, an eleven-story office building located in downtown Wilmington.<sup>2</sup> One Commerce Center was constructed in 1983, and the subject properties were conveyed the same year, which is the same year the County utilizes as a comparative base year for tax assessment purposes. Under the County's base year system, the fair market value<sup>3</sup> for all property located in New Castle County is determined and "then that value is factored back to 1983 values, the year of the last general reassessment. A fixed rate of taxation is then applied to the base year assessment to

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<sup>2</sup> The date of the assessment is not clearly identified in either parties' briefing. However, because the appeal was filed in March, 2012, it appears the assessment likely occurred in late 2011 or early 2012.

<sup>3</sup> True value in money is the same as the property's fair market value—"the price which would be agreed upon by a willing seller and a willing buyer, under ordinary circumstances." *Teachers Ins. & Annuity Ass'n.*, 669 A.2d at 102.

reach a uniform result.”<sup>4</sup> Formulae and techniques are utilized to factor back values to 1983. Applying the base year formula, the County assessed the properties at issue at \$432, 900.

### **B. Procedural History**

On March 15, 2012, the five property owners submitted separate appeals for their respective units to contest the County’s tax assessment utilizing the base year formula.<sup>5</sup> Ultimately, however, common interests resulted in a joint submission.<sup>6</sup> By appealing to the Board, the Appellants sought to have their properties reassessed to \$200,200, rather than the current assessment of \$432,900.

On March 20, 2013, the Board held a hearing regarding Appellants’ appeal of the County’s assessment. However, because of time constraints, and also to allow Appellants to present additional evidence and testimony, the hearing reconvened on May 15, 2013 (both hearings collectively referred to as the “Hearing”).<sup>7</sup> At the Hearing, the Appellants offered testimony of Richard Stat (“Stat”), who was admitted by the Board as a real estate expert.<sup>8</sup> Stat provided the Board with two separate analyses in support of amending the tax assessment of the units in One Commerce Center.<sup>9</sup>

The first analysis focused on the assessments of properties that Stat contended were comparable to the subject units in One Commerce Center. Stat compared the assessments of

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<sup>4</sup> *New Castle County v. New Castle Bd. of Assessment*, 2008 WL 1904266 at \*3-5 (Del. Super. Ct. Apr. 30, 2008).

<sup>5</sup> Appellants’ Opening Br. at 3.

<sup>6</sup> *Id.*

<sup>7</sup> Board member Felicia presented a two-prong motion to the Board that, in part, sought a continuance of the matter to “allow for the income approach to be reviewed . . . so that ample time can be given to the appellants regarding that parameter.” R. at 60. Board member Larrimore states, “[i]f you want to reopen it later you can but I still would have the same [thought, that the actual 1983 figures are so probative and there’s no reason to do any further analysis].” *Id.*

<sup>8</sup> Appellants’ Opening Br. at 4. Mr. Stat is the president of Stat Organization, which developed One Commerce Center, the building at issue in this case. He is not an appraiser but was admitted as an expert given his experience in commercial real estate. Mr. Stat has an MBA in finance from Wharton Graduate Division at University of Pennsylvania and has served as president of Stat Organization since 1974.

<sup>9</sup> *Id.* at 5.

these properties to One Commerce Center. Stat used other high-rise office buildings in Wilmington and smaller office buildings in Wilmington in his analysis. The County assessed these properties at around \$45 per square foot, leading Stat to argue that the units in One Commerce Center should be assessed at the same rate.<sup>10</sup> Stat also provided evidence indicating the County previously assessed Unit 100B in One Commerce Center at \$42.31 per square foot in 1993. Testimony was presented, however, that Unit 100B is unlike other units in One Commerce Center, because it is only 52 square feet and houses vending machines and a security access panel. Stat argued that the assessment of Unit 100B represents a fair and accurate assessment for the rest of the units in the same building, and the other units—including those units at issue in the case *sub judice*—should therefore be reassessed at the same rate.<sup>11</sup>

The second analysis Stat provided focused on the “income approach,” which is one of the three generally accepted methods of valuing property in New Castle County.<sup>12</sup> Only two units in One Commerce Center are income-producing.<sup>13</sup> Stat used the income data of these units to argue that \$41.48 per square foot is the proper tax assessment rate for units in One Commerce

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<sup>10</sup> *Id.* at 10.

<sup>11</sup> Unit 100B is a small vending area. However, Appellants argue that the area has just as much value because the costs to build it were “high or higher” than other floors, given the “complicated security and monitoring systems” benefitting all unit owners and tenants. *Id.* at 10.

<sup>12</sup> Appellants’ Ans. Br. at 6. The other methods are the comparable sales (or market) approach and the cost approach. In *Seaford Associates, L.P. v. Board of Assessment Review*, the following three techniques were explained in the expert’s appraisal report as follows:

In the Market Approach recent sales of similar properties are examined and compared to the subject property. Market oriented adjustments are made for any differences between the comparable sales and the subject.

The Income Approach is a method of arriving at the estimated value of the property by analyzing the potential income and expenses from income producing real estate. The net income is then capitalized to indicate the value of the property as an investment. It assumes a return based on that which competitive properties are receiving.

In the Cost Approach, the site and improvements are treated separately for analytical purposes. By means of a market analysis, the site is valued independently as if vacant and ready to be put to its highest and best use.

539 A.2d 1045, 1047 n.1 (Del. 1988).

<sup>13</sup> Appellants’ Ans. Br. at 6.

Center.<sup>14</sup> This tax assessment rate, as well as the rate from the comparable properties approach, is about half the amount assessed by the County.

After Stat’s presentation, the County presented testimony of Veronica Bonk (“Bonk”), an Assessor II with the County Office of Property Assessment.<sup>15</sup> Bonk took issue with Appellants’ use of the assessed value of a vending area in their building—specifically, Unit 100B—as an example for the assessment value of other units in the building. Bonk asserted that the actual 1983 sales of the units in One Commerce Center is highly probative evidence of the 1983 value. Bonk also presented the County’s income approach to valuation, to compare it with Stat’s testimony. Bonk testified at the Hearing that she “had an office market survey done by Stoltz Realty” that consisted of seven office buildings located in downtown Wilmington, including One Commerce Center, to determine the market rent as of 1983.<sup>16</sup> The rental rates per square foot ranged from \$14.00 to \$18.50, with One Commerce Center at \$18.50.<sup>17</sup> Bonk explained that the median rate of \$16.50 was used to calculate gross income for a unit in One Commerce Center.<sup>18</sup> After accounting for a 10% vacancy, and subtracting operating expenses of 25%, which Bonk submitted was an average percentage for downtown Wilmington, the data yielded a net operating income of \$52,702 as of 1983.<sup>19</sup> The County then utilized a capitalization rate of 12.1%, which Bonk explained is the rate established for this geographic area in 1983. The County’s calculation yielded a value of \$435,550.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 7.

<sup>16</sup> R. at 111.

<sup>17</sup> Bd. Decision at 7.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

In response to Bonk’s presentation, Stat asserted that the operating expenses used by the County were too low and should be higher than 25%.<sup>20</sup> Additionally, Appellants asserted that a capitalization rate of 12.1%, used by the County, is inaccurate as a result of subsequent market change that invalidated the 1983 estimates of income for One Commerce Center.<sup>21</sup>

### **C. Statements Regarding Actual 1983 Figures**

Because the subject properties located at One Commerce Center were built and sold in the same year utilized by the County as the base year, 1983, there was considerable discussion during the Hearing—by the advocates of each respective side, the Board’s independent counsel, as well as between Board members—regarding the extent to which the Appellants’ valuation arguments should be considered. Appellants claim Board members Felicia, Bandy, Larrimore, and Mannion erroneously believed they could only consider the actual 1983 sales figures since they were available, and not use other formulae to determine the 1983 value. Appellants quote the following statements made by Board members at the Hearing in support of their claim:

[Felicia.] I would disagree with you [that the Board’s rules provide that an actual 1983 sale must be used]. I think if you’ve read those rules you will see that.<sup>22</sup>

...

I do think you can look at a lot of data and it doesn’t seem to matter because it still always goes back to the way things were set in 1983. So while everybody can say that’s the way it is, it’s still also presenting hardships on people.<sup>23</sup>

[Bandy.] The entire basis for the appeal is the 1983 market value. That’s all we can consider. And unfortunately you don’t have a dispute with 1983 market value. There are many, many, many properties in New Castle County that are in a similar position at this point in time. And each time we deny the appeal based on the fact that the 1983 market value has not been proven to be incorrect.<sup>24</sup>

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<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.*

<sup>22</sup> R. at 54.

<sup>23</sup> Because there was not a tie between the Board members, Felicia, as Chair, did not get to vote.

<sup>24</sup> R. at 30.

[Larrimore:] [I]n as much as the actual information having to do with what the income was in 1983 is quite available, there is no need to go through an analysis of what the current [*sic*] or income is and then applying a discount rate to go back to 1983 values. . . . [M]y thought is that we are going through an analysis here that isn't necessary because the real numbers are available.<sup>25</sup>

[Mannion:] I completely agree with Mr. Larrimore on this. [The actual information] support[s] the data at the time what it would sell for. And the actual income approach back then they wouldn't have paid that amount unless they could have made that income at that time, plus you are talking about a brand new building which always carries a premium too, and I don't know that this final correlation of value takes that into account.

. . .

[T]here seems to be a lot of different ways to look at this and you made some very good points and a very good presentation. I was impressed by it. But if you look at just sales, and you were around at that time you do realize at that time you paid a premium price because it was brand new right then and there and you were Class A. And like you pointed out, things have changed over the years so actually, you know, every 10 years you can be coming here asking for a new number. So I think in this case, it doesn't seem to benefit you guys that you were built right at the time that the assessment took place. But the ultimate standard here seems to be the sales numbers that do exist in '83.<sup>26</sup>

Although not quoted by Appellants, the Board's independent counsel, Davis, also made statements at the Hearing which are relevant to Appellants' claim that certain Board members misunderstood the significance of the 1983 figures. Davis stated during the Hearing,

So when we are talking about the income approach, it is appropriate to use current market, current value, current income data for [using] the income approach. Now I am sure that the County will have some things to say about the problems that may have presented themselves with the appellants' income approach in this case, but as far as determining an assessed value using the income approach, it's appropriate, completely appropriate to use current market value.<sup>27</sup>

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<sup>25</sup> *Id.* at 60.

<sup>26</sup> *Id.* at 131-32.

<sup>27</sup> *Id.* at 93.

#### **D. Board's Decision**

Following the Hearing, the Board voted four to zero (with the Chair not voting) to uphold the \$432,900 assessment.<sup>28</sup> On July 15, 2013, the Board issued its written decision denying all appeals.<sup>29</sup> The Board concluded the Appellants' evidence was insufficient to overturn the assessments for their properties, especially given the availability of the actual numbers from the 1983 sales of the units in One Commerce Center.<sup>30</sup> The Board also concluded that Delaware Courts have affirmed the constitutionality of the County's base year system, and that Appellants provided no existing law warranting the reassessment of their properties.<sup>31</sup>

##### *i. Sufficiency of Appellants' Evidence*

The Board concluded that Appellants failed to present sufficient evidence to warrant overturning the County's assessment, using both the sales comparison approach as well as the income capitalization approach. Regarding the first approach, the Board acknowledged, "The difficulty the Appellants face under the sales comparison approach is the existence of 1983 sales of units in One Commerce Center."<sup>32</sup> The Board opinion explained that, although "those sales are excellent indicators of the fair market value of a unit in One Commerce Center in 1983,"<sup>33</sup> the Board "considered the Appellants' sales comparison approach."<sup>34</sup> The Board concluded that "the Appellants did not present a cognizable sales comparison approach to the Board for the purposes of determining the value as of July 1, 1983,"<sup>35</sup> and Appellants' use of "Unit 100B as

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<sup>28</sup> *Id.* at 8. The Board's Chair only votes in the event of a tie between the other Board members.

<sup>29</sup> *Id.*

<sup>30</sup> *R.* at 8.

<sup>31</sup> *Id.*

<sup>32</sup> *Bd. Decision* at 8.

<sup>33</sup> *Id.* at 7-8.

<sup>34</sup> *Id.* at 8.

<sup>35</sup> *Id.*

the one lone correctly-assessed unit in One Commerce Center”<sup>36</sup> was not credible. The Board determined that it could not “reasonably utilize this unit, constituting 52 square feet and housing vending machines and a security access panel, to establish a reference point for reassessing the units in One Commerce Center.”<sup>37</sup> The Board stated that “Unit 100B is clearly incomparable to the other units.”<sup>38</sup> Additionally, the Board’s decision explained how Appellants failed to satisfy their evidentiary burden, stating,

very little information was provided regarding the purported comparable sales, aside from deeds of sale and passing comment on their use as commercial office space. While Mr. Stat testified that he adjusted these sales for the existence of off-street parking and recent renovations, he did not monetize these adjustments, nor did he make any other adjustments typically seen by the Board, such as location, size, age, and condition.

The Board also concluded that “the Appellants failed to prove substantial overvaluation of their properties . . . using the income capitalization approach.”<sup>39</sup> After considering the evidence presented by Appellants in support of their income capitalization approach, the Board stated,

Because the Board finds that Appellants failed to present a cognizable sales comparison approach, the Appellant’s income capitalization approach is untested against any other approach. It is unconvincing that the valuation resulting from the Appellants’ income capitalization approach fell exactly in line with the assessed per square foot value of Unit 100B, given the dissimilarities between 100B and the other units in One Commerce Center. For assessment purposes, the Board finds that a single year of contemporary income factored back to 1983, untested against another valuation approach, is insufficient to overturn an assessment. This is particularly true when that evidence is weighed against sales of the units in the 1983 base year.<sup>40</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Bd. Decision at 8.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 9.

*ii. Constitutionality of Base-Year Formula*

As a threshold to considering Appellants’ constitutional challenge, the Board, quoting the Delaware Supreme Court in *Stewart*, explained,

Optimally, every system of assessment will incorporate both the preference for present market value and the requirement for uniformity into its general scheme; but, when these two concepts cannot be accommodated under the facts of a specific case, the former must give way to the latter as the true measure of assessment.<sup>41</sup>

The Board concluded that the Appellants’ argument that the base year system should be “abandon[ed] . . . in light of the present market value of their properties”—contending such “abandonment will ensure that the Board comports with the uniformity and ‘fairness’ requirements of the Article VIII, Section I of the Delaware Constitution”—“reverses the hierarchy established by the Supreme Court, placing uniformity over present market value.”<sup>42</sup>

The Board continued, again quoting the Court in *Stewart*, and explained that implementation of a system whereby the County must abandon the base year approach when the present value of the property, as determined at a later date, is known, “without a general class-wide reassessment every time a property is assessed or reassessed would result in the application of different measures of assessment between taxpayers of the same class.”<sup>43</sup> Applying different measures of assessment between taxpayers of the same class, the Board explained, “is precisely the result prohibited by Article VIII, s 1. Faced with these alternatives, ‘it is understandable that the Board would accord precedence to uniformity over standard of value when . . . (the) choice . . . (had to) be made.’”<sup>44</sup>

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<sup>41</sup> *Id.* (quoting *Board of Assessment Review v. Stewart*, 378 A.2d 113, 116 (Del. 1977)).

<sup>42</sup> *Id.* at 10 (quoting *Stewart*, 378 A.2d 113 at 116).

<sup>43</sup> *Stewart*, 378 A.2d at 116.

<sup>44</sup> *Id.*

### **III. STANDARD OF REVIEW**

A property owner who seeks reduction of a property tax assessment faces “a substantial evidential burden.”<sup>45</sup> Pursuant to 9 *Del. C.* §8312(c), the Board’s decision will only be overturned if the appellant establishes that the Board acted contrary to law, fraudulently, arbitrarily, or capriciously.<sup>46</sup> The decision of the Board is presumed to be *prima facie* correct.<sup>47</sup> To rebut the presumption, “the property owner’s evidence must not only be competent; it must be sufficient to show a substantial overvaluation.”<sup>48</sup> The property owner need not present “proof positive” evidence of substantial overvaluation before the Board, but must provide “competent evidence of such a claim.”<sup>49</sup> Once evidence has been presented rebutting the presumption of correctness of the County’s assessment, the burden then shifts to the County, which must present evidence in support of upholding the assessment.<sup>50</sup> If the competent evidence offered by the property owner is not rebutted by the County, “there is little to do . . . but to conclude that the Board acted at least arbitrarily . . . in making an assessment on the basis of a value substantially greater than that established by the only evidence in the case.”<sup>51</sup>

### **IV. DISCUSSION**

Given the deferential standard of review by which this Court reviews the Board’s decision, Appellants face a heavy burden. The Court notes that Appellants expended significant resources and demonstrated a thorough, diligent effort while appealing the County’s property tax assessments. However, Appellants failed to establish that the Board acted contrary to law,

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<sup>45</sup> *Excelsior Associates, L.P. v. New Castle County Dept. of Finance*, 1995 WL 347380 at \*5 (Del. Super. Ct. Jan. 31, 1995) (citing *Seaford Assoc. v. Bd. of Assessment Review*, 539 A.2d 1045, 1047 (Del. 1988)).

<sup>46</sup> *Excelsior Associates*, 1995 WL 347380, at \*6 (citing 9 *Del. C.* §8312(c)).

<sup>47</sup> *Tatten Partners, L.P. v. New Castle County Bd. of Assessment Review*, 642 A.2d 1251, 1256 (Del. Super. Ct. 1993).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at \*10.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* (quoting *Fitzsimmons v. McCorkle*, 214 A.2d 334, 337 (1965)).

fraudulently, arbitrarily, or capriciously by denying their tax assessment appeal. Based on Appellants' claims of error, each of which is discussed below, and a thorough review of the record, the Court concludes that the Board's decision should not be disturbed, as the Board properly evaluated the credibility of the evidence presented and concluded that Appellants failed to present competent evidence supporting substantial overvaluation.

**A. The Requirement of Uniformity**

The Appellants' first argument in support of reassessment focuses on requirements of uniformity in the Delaware Constitution. "Uniformity in taxes as mandated by the Delaware Constitution, is achieved when all taxpayers of the same general class and within the territorial limits of the authority are treated the same."<sup>52</sup> In reference to uniformity, Appellants assert two distinct arguments: (1) that the Board members were operating under the legally erroneous understanding that they could not deviate from the actual 1983 data provided by the County; and (2) that the Board "misapplied" the concept of uniformity by accepting the County's calculation instead of using a trended-back approach.

***i. Board Did Not Erroneously Believe It Was Bound by 1983 Data***

Appellants' contention that the Board's decision should be reversed because certain Board members erroneously thought they were bound by the 1983 data, and could not consider other evidence of valuation, is entirely without merit. Appellants cite statements, which are recited in detail above, made by the following Board members: (1) Felica, (2) Bandy, (3) Larrimore, and (4) Mannion.

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<sup>52</sup> *Seaford Assoc. v. Bd. of Assessment Review*, 539 A.2d 1045, 1049 (Del. 1988) (citing Delaware Constitution).

## 1. Felicia

The Court is not persuaded that Felicia's statements during the Hearing justify reversing the Board's decision. First, the statement cited by Appellants indicating Felicia was misinformed does not unequivocally demonstrate that Felicia thought she couldn't *deviate* from the 1983 figures, rather than being forced to "use," *i.e.*, consider, those figures. While Appellants interpret Felicia's statement to say that Felicia thought the Board could not deviate from the 1983 figures, the interpretation that remains truest to her actual language, is that Felicia thought the Board must consider the figures in determining whether the Appellants met their burden of establishing substantial overvaluation. Second, even assuming *arguendo* Felicia was operating under an erroneous belief, Felicia was not one of the four Board members who voted in favor of denying Appellants' appeal, because she served as the Chair of the Board.

## 2. Bandy

Appellants also cite statements made by Board member Bandy at the Hearing, where she states, "The entire basis for the appeal is the 1983 market value. That's all we can consider."<sup>53</sup> Appellants contend Bandy's statement should be interpreted to mean that Bandy believed, incorrectly, that only the *actual* 1983 figures could be considered in determining whether the County's assessment was substantially overvalued. A more reasonable meaning is that, consistent with her words, the ultimate issue in the case is to determine the accurate value of the property as of 1983. Any ambiguity is clarified after looking to the statement Bandy made immediately after the portion emphasized by Appellants, which states, "There are many, many, many properties in New Castle County that are in a similar position at this point in time. And each time we have to deny the appeal based on the fact that the 1983 market value *has not been*

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<sup>53</sup> R. at 30.

*proven* to be incorrect.”<sup>54</sup> Importantly, Bandy explains that assessment appeals for similarly situated properties are often denied because the property owner “has not . . . proven” that the 1983 market value using the base year formula is incorrect. If Bandy were operating under the erroneous understanding that the actual 1983 figures were conclusive, rather than probative, it would not be possible to prove the actual 1983 figures incorrect. Thus, taking Bandy’s statement in totality, the Court concludes that Bandy understood it was possible to rebut the actual figures from 1983 and, therefore, did not operate under the erroneous belief advanced by Appellants.

### 3. Larrimore

The statement of Board member Larrimore cited by Appellants only indicates that Larrimore believed there was “*no need* to go through an analysis,” rather than stating the Board *could not consider* Appellants’ analysis. While Appellants urge that this statement demonstrates that Larrimore was operating under the incorrect understanding that evidence of overvaluation could not be considered, this statement can reasonably be read to indicate that Larrimore was so persuaded by the actual figures from 1983 that he found there was “no need to go through an analysis” offered by Appellants.

Additionally, the context in which Larrimore made the above-quoted statement is noteworthy. Larrimore made the statement immediately after Felicia presented a two-prong motion to the Board that, in part, sought a continuance of the Hearing to “allow for the income approach to be reviewed . . . so that ample time can be given to the appellants regarding that parameter.”<sup>55</sup> Further, in a portion of the Hearing transcript not emphasized by Appellants, Larrimore states, “But if you want to reopen it later you can . . . .”<sup>56</sup> Larrimore’s statement can reasonably be read to indicate that he thought such a continuance was unnecessary, *i.e.*, there

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<sup>54</sup> *Id.* (emphasis added).

<sup>55</sup> *Id.* at 60.

<sup>56</sup> *Id.*

was “no need to go through an analysis,” because, at least in his mind, the 1983 figures were probative (rather than conclusive, as Appellants argue).

#### 4. Mannion

Appellants also cite to a statement made by Board member Mannion, where he agrees with Larrimore’s position, discussed immediately above, stating that “the actual information having to do with what the income was in 1983”<sup>57</sup> “support[s] the data at the time what it would sell for.”<sup>58</sup> This statement only indicates that Mannion believed the actual data support the 1983 value. Further, Mannion discussed the deficiencies he perceived in Appellants’ methodology, which he would not have considered if, as Appellants argue, he mistakenly believed the actual 1983 figures were conclusive. Further, Mannion found that Appellants’ final correlation of value failed to take into account that “a brand new building which always carries a premium” was at issue.<sup>59</sup>

Finally, while acknowledging that “it doesn’t seem to benefit [the Appellants] that [their building was] built right at the time that the [most recent] assessment took place,” Mannion nevertheless concluded that “the ultimate standard here seems to be the sales numbers that do exist in ‘83.”<sup>60</sup> Immediately prior to making the ultimate-standard statement, Mannion again emphasized, “[I]f you look at just sales, and you were around at that time you do realize at that time you paid a premium price because it was brand new.”<sup>61</sup> The Court concludes that Mannion’s statements, taken as a whole, do not evidence that he mistakenly believed that he was *bound* to accept the actual 1983 data.

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> R. at 60.

<sup>60</sup> *Id.* at 131-32.

<sup>61</sup> *Id.*

## 5. Clarification By Board's Independent Counsel

Additionally, while the statements of the Board members cited above is, at points, somewhat ambiguous and equivocal, the independent counsel who provides impartial advice to the Board unequivocally stated during the Hearing,

*So when we are talking about the income approach, it is appropriate to use current market, current value, current income data for [using] the income approach. Now I am sure that the County will have some things to say about the problems that may have presented themselves with the appellants' income approach in this case, but as far as determining an assessed value using the income approach, it appropriate, completely appropriate to use current market value.*<sup>62</sup>

Thus, the Board's independent counsel made clear to the Board that it was "completely appropriate" for the Board to consider "current market, current value, [and] current income data," all of which is beyond the actual 1983 figures.

## 6. Record Demonstrates Board Considered Considerable Evidence Beyond 1983 Figures

Furthermore, a review of the record in the case *sub judice*, including the Board's written decision and the hearing transcripts, plainly indicates that the Board considered valuation evidence beyond the 1983 figures, despite Appellants' contention to the contrary. First, while the Board did emphasize that "the existence of 1983 sales of units in One Commerce Center . . . are excellent indicators of the fair market value,"<sup>63</sup> the Board explained that it nonetheless "considered the Appellants' sales comparison approach,"<sup>64</sup> and concluded that "Appellants did not present a cognizable sales comparison approach."<sup>65</sup> To make clear that the Board's finding was not controlled by the 1983 data being available, the Board stated,

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<sup>62</sup> *Id.* at 93 (emphasis added).

<sup>63</sup> Bd. Decision at 7.

<sup>64</sup> *Id.* at 8.

<sup>65</sup> *Id.*

Assuming *arguendo* that no 1983 sales for the units in One Commerce Center existed, the evidence the Appellants submitted in their sales comparison approach would still have been insufficient to overturn their assessments, given that they failed to submit any evidence of 1983 sales, and failed to correlate the purportedly comparable sales to value as of 1983.<sup>66</sup>

The Board also explained that the evidence demonstrated that Appellants' use of Unit 100B was unreliable, because the unit "is clearly incomparable to the other units" as it constitutes "52 square feet and housing vending machines and a security access panel," in addition to being constructed in 1993, ten years after the base year.<sup>67</sup> The Board also "note[d] that very little information was provided regarding the purported comparable sales," stating that Mr. Stat did not monetize certain adjustments made and did not make other adjustments "typically seen by the Board, such as location, size, age, and condition."<sup>68</sup>

Finally, a thorough review of the record and the Board's decision makes it evident to this Court that the Board also considered Appellants argument, and related evidence, in support of their income capitalization valuation approach. On page nine of the Board's decision, the Board plainly states that it "considered the evidence presented" in support of that approach, and concluded that "a single year of contemporary income factored back to 1983, untested against another valuation approach, is insufficient to overturn an assessment," particularly "when that evidence is weighed against sales of the units in the 1983 base year." Thus, the Board explained how it *weighed* the evidence presented by the Appellants against the 1983 data, rather than just finding, as Appellants suggest, that the 1983 data was conclusive.

#### ***ii. Board Properly Used Base Year Formula***

The Court also disagrees with Appellants' contention that the Board misapplied the concept of uniformity by accepting the County's calculation instead of using a trended back

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

approach. The Delaware Supreme Court has held that using base year data is constitutional. Further, it is well established that the County's use of the base-year formula is consistent with constitutional mandates of tax uniformity.<sup>69</sup> As explained in *Stewart*, a decision on which the Board relied, the Delaware Supreme Court succinctly stated that "the County may use the 'base year' formula as a method of implementing the constitutional mandate of tax uniformity," even when a property's current market value is *known*.<sup>70</sup> The landowner-appellee in *Stewart* asserted "that the County should be obliged to abandon [the base year formula] when the present market value of the property, as determined by a later date, is known."<sup>71</sup> In rejecting the landowner-appellee's argument, and affirming the Board's use of the base year formula, the Delaware Supreme Court explained,

[I]mplementation of such a system, without a general class-wide reassessment every time a property is assessed or reassessed would result in the application of different measures of assessment between taxpayers of the same class. That is precisely the result prohibited by Article VIII, s 1. Faced with these alternatives, "it is understandable that the Board would accord precedence to uniformity over standard value when . . . (the) choice . . . (had to) be made."<sup>72</sup>

Indeed, more recently, in 2008, the Superior Court approved of the County's use of a base year system, finding it to be constitutional.<sup>73</sup> Thus, Appellants' disagreement with the

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<sup>69</sup> See *Bd. of Assessment Review v. Stewart*, 378 A.2d at 116.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* (quoting *Fitzsimmons* 214 A.2d at 340).

<sup>73</sup> The Superior Court approved of the County's use of a base year system, stating:

New Castle County has opted to use the base year method of assessment for purposes of uniformity. Under this method, the true value in money, that is, fair market value, is determined for each property, then that value is factored back to 1983 values, the year of the last general reassessment. A fixed rate of taxation is then applied to the base year assessment to reach a uniform result. . . . The function of the Board is to determine whether the assessment on review is correct based on accepted methods of assessing properties, and, in so doing, to take into account all elements entering into the value of a property. The Board heard evidence from both parties and decided that [the property owner's] methodology resulted in a more accurate assessment, and the County does not disagree. [The property owner's] values were factored back to the base year of 1983, *in satisfaction of the constitutional uniformity requirement.*

Board's use of the base year formula to satisfy constitutional requirements of uniformity simply has no merit. Rather, according to the Delaware Supreme Court's reasoning in *Stewart*, Appellants' request for reassessment could very well "result in the application of different measures of assessment between taxpayers of the same class,"<sup>74</sup> which is "precisely the result prohibited by Article VIII, s 1."<sup>75</sup> While this Court certainly agrees that it would be ideal to harmonize standard value with uniformity, as the *Stewart* Court explained, "it is understandable that the Board would accord precedence to uniformity over standard value when . . . (the) choice . . . (had to) be made."<sup>76</sup> The Court cannot conclude that the Board's decision to deny Appellants' request for reassessment after utilizing the base year formula was contrary to law, fraudulent, arbitrary, or capricious.<sup>77</sup>

#### **B. Delaware Case Law & Tax Assessment Reviews**

Appellants' second argument relies on Delaware case law. However, Appellants misapply the case law cited in support of their argument for reassessment.

In the first case cited by Appellants, *New Castle County Dept. of Finance v. Teachers Insurance*, the Court determined that while the Board should hear the entire appeal when a taxpayer presents evidence of substantial overvaluation, the County is free to use different valuation methods, and present evidence in support of those methods.<sup>78</sup> The *Teachers Insurance* Court explained that the Board then uses its expertise to "evaluate the competing methodologies; make an informed judgment as to which is more persuasive; and state the reasons for its

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*New Castle County v. New Castle Bd. of Assessment*, 2008 WL 1904266 at \*3-5 (Del. Super. Ct. Apr. 30, 2008) (emphasis added).

<sup>74</sup> *Stewart*, 378 A.2d at 116.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* (quoting *Fitzsimmons* 214 A.2d at 340).

<sup>77</sup> *Excelsior Associates*, 1995 WL 347380, at \*6 (citing 9 *Del. C.* §8312(c)).

<sup>78</sup> *Teachers Ins.*, 669 A.2d at 103.

decision.”<sup>79</sup> This is exactly what happened in the case *sub judice*. As discussed above, the Board considered the evidence presented by Appellants, found it lacked credibility in the face of the actual 1983 data, and denied Appellants’ request for reassessment.

While the County in *Teachers Insurance* did not present evidence contrary to the taxpayer’s evidence, Appellees here did. Bonk, an Assessor II with the County Office of Property Assessment, testified. She asserted that Appellants were attempting to apply an assessed value per square foot of a newer Vending Area in their building to the other units that were actual offices, without similar vending areas. Additionally, she asserted that the best evidence of value for the units was the actual sale prices in 1983. Bonk also provided the Board with the County’s income approach to valuation, after the Board requested more information from the County.<sup>80</sup> After evaluating the competing evidence, the Board then concluded that the County’s evidence of value was more persuasive. As the Court in *Teachers Insurance* noted, “[I]f the County had presented contrary evidence, the Board could have concluded . . . that the County’s evidence of value was more persuasive.”<sup>81</sup> In the case *sub judice*, the Board concluded that the County’s evidence was more persuasive, as this case law provides, it is entitled to do.

Appellants’ reliance on *Seaford Associates* is also misplaced. The Court in *Seaford Associates* simply decided the narrow question of whether an administrative body charged with the duty of determining claims of over-assessment may preclude the application of one of the three accepted standards for real property valuation.<sup>82</sup> The Court noted that the case was not about the Board making a judgment to select one valuation method over another, but that the Board entirely refused to permit the application of the income method or give it any

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<sup>79</sup> *Id.*

<sup>80</sup> This serves as further evidence that the Board considered and weighed all the evidence presented.

<sup>81</sup> *Id.*

<sup>82</sup> *Seaford Associates*, 539 A.2d at 1048.

consideration.<sup>83</sup> The Court found this flat denial arbitrary.<sup>84</sup> Again, in the case *sub judice*, the Board considered the Appellants' testimony, even reconvening the hearing on another day to allow for a more complete presentation. The Board never flatly denied the Appellants' an opportunity to present all the evidence they had in support of revaluation.

As discussed above,<sup>85</sup> there is considerable evidence in the record establishing that the Board did weigh the evidence as required. The Board heard Appellants' evidence, but found that the actual sale of units in 1983 "was the best 'comparable' . . . for the Board's purposes of base year assessment for the Assessment Comparison Approach."<sup>86</sup>

### C. Appellants' Improper Transfer of Power Claims

In regard to Appellants transfer of power argument, the Court will assume *arguendo* that it is properly before the Court.<sup>87</sup> However, even if deemed proper, Appellants' argument lacks any legal foundation, as Appellants cite no case law, and this Court is unaware of any, in support of their contention the assessment power was improperly transferred from the Department of Land Use to the Department of Finance.<sup>88</sup> Based on the lack of authority cited by Appellants in

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 1049.

<sup>85</sup> See *supra* Part (IV)(A)(i)(6).

<sup>86</sup> *Id.* It is also noteworthy that Appellants conceded at the Hearing that they had not consulted an appraiser to contradict actual sales from 1983 for the income approach. See R. at 56 (counsel for Appellants is asked by the Board whether "there is an appraisal to document the value of the property from the income approach in 1983," and Appellants' counsel replies, "Well you tell me the name of an appraiser who is willing to go on record and say that the property is worth half of what it actually sold for in 1983 based on his or her, you know, expert appraisal knowledge. . . . [Appraisers] won't discount things built in '83 because they are going to put their license in jeopardy.").

<sup>87</sup> *Tatten Partners, L.P. v. New Castle County Bd. of Assessment Review*, 642 A.2d 1251, 1262 (Del. Super. Ct. 1993) ("[W]hen this Court acts in its appellate capacity on an appeal from an administrative board, the Court will not consider issues not raised before the tribunal.") (citing *Wilmington Trust Co. v. Conner*, 415 A.2d 773, 781 (Del. 1980)); see also *id.* ("[I]n reaching a decision regarding a property assessment, this Court considers the record below . . . . At the Court's discretion, the parties are permitted to present further evidence on the 'pertinent matter.' This pertinent matter is the amount of the property assessment as decided by the Board; it is not the 'deprivation of any rights, privileges, or immunities secured by the Constitution and laws.'").

<sup>88</sup> Appellants' Opening Br. at 31.

support of their claim, the Court is not persuaded that there was any improper transfer of power, especially given that 9 *Del. C.* §1122 provides the County Executive extensive power to restructure the County government.<sup>89</sup>

At this stage, this Court's role is limited to determining whether the Board acted contrary to the law, fraudulently, arbitrarily, or capriciously in denying a tax assessment appeal. In reviewing evidence and testimony from both the Appellants and the County, but ultimately choosing to find the County's assessment more credible, the Court concludes that the Board did not do so.

#### **V. CONCLUSION**

Appellants did not sustain their burden to show that the Board, in denying their tax assessment appeal, acted contrary to the law, fraudulently, arbitrarily, or capriciously. Therefore the decision of the Board is **AFFIRMED**.

**IT IS SO ORDERED.**

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/s/  
M. Jane Brady  
Superior Court Judge

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<sup>89</sup> “The County Executive of New Castle County shall have the power to merge, establish, rename, and modify departments, boards, agencies, commissions, and offices of the county and may prescribe the functions and management systems of all departments, boards, agencies, commissions and offices of the county, subject to approval of County Council. The authority granted pursuant to this section shall supersede any conflicting provisions within this title.”