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Re: Moynihan v. The City of Seaford
C.A. No. 1352-S
Date Submitted: August 21, 2006

Dear Counsel:

The Plaintiffs have moved for reargument of the Court's Memorandum Opinion of August 7, 2006.[1] Specifically, they challenge the determination that this action should be dismissed for the Plaintiffs' failure to exhaust administrative remedies.

[1] *Moynihan v. City of Seaford*, 2006 WL 2389333 (Del. Ch. Aug. 7, 2006).

A motion for reargument under Court of Chancery Rule 59(f) requires the moving party to demonstrate that the Court's decision was based upon a misunderstanding of a material fact or a misapplication of the law.[2]

At the core of Plaintiffs' motion is the assertion that the Court misunderstood the facts by not recognizing that the City had stated that, during administrative review of the new assessments, it would not consider the methodology used by Mr. Westergren. The Court understood that the City had not considered challenges to his methodology at a public hearing held by the Board of Revision and Appeal on May 24, 2005. The City's ability to consider these factors now, if it so chooses, is not compromised because it has stayed processing the appeals pending resolution of this proceeding.

Implicit in the motion is Plaintiffs' speculation that the City will ignore those portions of the Court's decision holding that the agency is obligated to determine the underlying fairness of the appraiser's methodology and incentives before it can take advantage of the presumptions which normally make assessment

[2] *Goldman v. Pogo.com, Inc.*, 2002 WL 1824910 (Del. Ch. July 16, 2002); *In re ML/EQ Real Estate P'ship Litig.*, 2000 WL 364188 (Del. Ch. Mar. 22, 2000).

challenges quite difficult. Also implicit is the expectation on the part of the Plaintiffs that the City will proceed to address all challenges to the reassessment without considering any further challenge to Mr. Westergren's process and incentives. Maybe the City will reconsider its position. If so, the basis for the motion falls away. On the other hand, if the City persists in its view that Mr. Westergren's work is entitled to a presumption of validity despite significant and substantial questions about both his methodology and his incentives, however unfair they may have been, then that can be resolved in the Superior Court through its review of the reassessment appeals.[3]

Administrative decisions are sometimes in error; these errors may involve key aspects of substantive law or important procedural matters. Simply because the agency will (or may) make an error that would be material does not allow the Court to interject itself into the orderly administrative process. Otherwise, every time an agency commits, or approaches committing, an error, interlocutory judicial review would follow. The reluctance of courts to become involved in the middle

[3] *See, e.g., Kejand, Inc. v. Town of Dewey Beach*, 1996 WL 422333, at *2 (Del. Ch. July 2, 1996).

of an administrative process forms the foundation for the reasoning supporting the doctrine of exhaustion of administrative remedies. The Plaintiffs have plausible grounds for challenging the reassessment process as conducted by Mr. Westergren. They have not, however, demonstrated that the administrative process is incapable of vindicating their rights.[4]

The Court neither misunderstood the facts nor misapplied the law in its Memorandum Opinion. The Plaintiffs' motion for reargument, accordingly, is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-S

[4] The doctrine of exhaustion of administrative remedies is, of course, applicable without regard to whether the challenging parties are right or wrong. In other words, even though the Plaintiffs' contentions could be viewed as persuasive, that does not absolve them of their obligation to follow established administrative procedures.

The Plaintiffs also accurately point out that only those landowners who file administrative appeals have any chance ever to obtain judicial relief. This Court does not have those other landowners before it, and the Plaintiffs did not purport to bring this action on behalf of others under Court of Chancery Rule 23.

The Plaintiffs also complain about the exorbitant payment made to Mr. Westergren by the City. Neither that issue nor Mr. Westergren is before the Court.