

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE**

STATE OF DELAWARE)	
NEW CASTLE COUNTY,)	
)	
Appellant,)	
)	Case No. 0701026252
v.)	
)	
STEVEN A. AUGUSIEWICZ,)	
)	
Appellee.)	
)	

**Submitted: May 29, 2008
Decided: July 11, 2008**

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ORDER
ON PLAINTIFF/APPELLANT'S APPEAL
FROM JUSTICE OF THE PEACE COURT

SUMMARY OF FACTS AND PROCEDURAL HISTORY

Plaintiff/Appellant, New Castle County (hereinafter "the County"), bring this appeal from a Justice of Peace Court's Order dated December 17, 2007 holding that pursuant to 9 Del. C. § 2601(b) the County Office of Code Enforcement lacked jurisdiction to enforce the Property Maintenance Code and the Unified Development Code on residential property assessed as farmland.

Defendant/Appellee, Steven Augusiewicz, owns the parcel of land at issue in this appeal (hereinafter referred to as “the Property”). The Property consists of approximately 21 acres located at 1010 Bohemia Mill Road in Middletown, Delaware. Augusiewicz has owned the Property since 2003, and during this period it has been assessed as land devoted to agricultural use pursuant to the requirements of 9 *Del.C.* § 8335. On November 1, 2006, Officer Gahan, a New Castle County Code Enforcement Officer, went to Augusiewicz’s property after receiving complaints that he was operating a construction/demolition business from his property. Subsequently, on November 20, 2006 Augusiewicz was cited for violating the New Castle County Property Maintenance and Zoning Codes. Specifically, he was cited for using his residential property and the structure located thereon for commercial purposes. He was also cited for openly storing debris, including a tractor trailer, on the property.

On December 18, 2006, Augusiewicz’s attorney was sent a letter indicating the Property was required to be brought into compliance within thirty (30) days. Officer Gahan inspected the Property on January 24, 2007 and found the alleged violations of the Property Maintenance and Zoning Codes had not been corrected. Consequently, on February 26, 2007, nineteen (19) charges were filed against Augusiewicz in the Justice of the Peace Court No. 11. Trial was scheduled for September 27, 2007.

On September 27, 2007, the parties appeared at Court No. 11 for a trial on the alleged nineteen (19) violations. Prior to trial, Augusiewicz moved to dismiss the charges on grounds the County lacked authority to enforce the Property Maintenance and Zoning Codes on his residential property. Specifically, Augusiewicz argued *Section*

25 of Article II of the Delaware Constitution of 1897, read in conjunction with *9 Del. C. § 2601*, precluded the County from adopting zoning and construction laws affecting land used for agricultural purposes. The County agreed the property was being used as farmland to farm hay; however, opposed dismissal on grounds that part of the property was being used for a construction/demolition business. At the conclusion of oral argument, the Justice of the Peace Court reserved decision on the motion. On October 5, 2007, the Justice of the Peace Court issued a decision denying the motion. Augustiewicz filed a motion for reargument and on December 17, 2007, the Justice of the Peace Court issued a second Order dismissing the case “holding the County lacked jurisdiction based on *9 Del. C. § 2601(b)*, to proceed with the violations.” On January 7, 2008, the County filed this appeal pursuant to *10 Del. C. § 9902*.

DISCUSSION

The issues before the Court are twofold. First, whether the Justice of the Peace Court abused its discretion in dismissing the alleged violations prior to a hearing on the merits, and second, whether *Section 25 of Article II of the Delaware Constitution of 1897*, read in conjunction with *9 Del. C. § 2601* and *9 Del. C. § 8335*, precludes the County from adopting zoning and construction laws regulating land assessed for agricultural purposes. The Court will first address the County’s authority to enforce zoning and construction laws.

The appellants contend that the Justice of the Peace Court committed reversibly erred by interpreting *9 Del. C. § 2601* so as to preclude the County from regulating non-agricultural uses on a parcel. The County advances two arguments: (1) the explicit

language of 9 *Del. C.* § 2601 is clear that the County is barred from regulating land, buildings, or structures proposed to be devoted or devoted to agricultural use; and (2) 9 *Del. C.* § 8335(d), (3) and (4) indicate legislative intent to permit New Castle County to enact Code provisions which may regulate non-agricultural uses on parcels assessed as farmland.

The provisions of 9 *Del. C.* § 2601(a) grants the County general authority to zone and regulate land use, however, the provisions of subsection (b) provide:

“(b) Notwithstanding subsection (a) of this section, no such regulation or regulations shall apply to any land, building, greenhouse or other structure proposed to be devoted to any agricultural use or which is devoted at the time of such proposal to agricultural use or to any land, building, greenhouse or other structure owned by a cooperative agricultural associations or a corporation which is or is proposed to be devoted to agricultural use. For the purposes of this subsection, any land, building, greenhouse or structure shall be deemed to be devoted to agricultural use if:

(1) The land, building, greenhouse or structure is assessed pursuant to Title 9, § 8335 of this title;

The parties do not dispute that the property in question is assessed pursuant to 9 *Del. C.* § 8335.

Delaware courts have held that in construing a statute, the plain meaning of the statutory language shall be given affect. *State Farm Mut. Auto. Ins. Co. v. Mundorf*, 659 A.2d 215, 220 (Del.1995). “In particular, ‘the courts may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature.’ ” *Id.* See also *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 932-33 (Del.2007). Where a statute is unambiguous, there is no need for judicial interpretation, and the plain meaning of the

statutory language controls.

Each side argues that the plain meaning of the Section 2601(b) supports its position. Appellee, in his brief seeks to emphasize pursuant to Section 2601(b), that “no such regulation or regulations shall apply to any land, building, greenhouse or other structure proposed to be devoted any agricultural use.” 9 *Del. C.* § 2601(b). Appellee argues that the legislative intent of the framers of Section 2601(b) was to preempt the County from exercising jurisdiction over agricultural property. *Appellee’s Answering Brief at 4*. As such, Appellee asserts that the “only fact of consequence” is the property classification as used for agricultural purposes pursuant to 9 *Del. C.* § 8335 and therefore, the County is prohibited from enforcing the Property Maintenance and Zoning Code on the Property. *Id.* To buttress his position, Appellee points to the legislative synopsis of an amendment to Section 2601 where the General Assembly, in a manner consistent with Article II, §25 of the Delaware Constitution, forbids the delegation of authority to the County to regulate land used for agricultural purposes. *Synopsis, House Bill No. 225* (June, 5, 2003)(“This Act provides that the county zoning regulations shall not apply to lands, buildings, greenhouses, and other structures dedicated to agricultural use....”).

The Appellee also relies on the Supreme Court decision in *E.I. DuPont de Nemours & Co. v. Clark*, 88 A.2d 436 (Del. 1952). In *Clark*, DuPont sought to exempt itself from the provisions of the Plumbing and Building Codes of New Castle County. *Id.* at 437. The particular building for which the exemption was being sought was an office building that would house DuPont’s Engineering Department. *Id.* New Castle

County argued for a narrow construction of the statutory language and opposed the exemption on the grounds that the structure did not serve an ‘industrial’ purpose, because the building did not further DuPont’s manufacturing or production needs. *Id.* at 438. In dismissing the County’s Appeal, the Delaware Supreme Court held that the construction of an office building to house an indispensable portion of DuPont’s workforce qualified as “property used for industrial purposes within the meaning of [the] Exemption.” *Id.* at 441.

Appellee posits that the *Clark* Court’s broad interpretation of the statute reflected the statutory intent of the Delaware legislature. Appellee argues that by exempting properties aside from those strictly used for industrial operations the legislature sought to make Delaware more attractive to industries seeking to build factories. *Appellee’s Answering Brief at 14.* In the current matter, Appellee seeks to convince the Court to apply a similarly broad interpretation of legislature statutory intent of the protections afforded agricultural uses under the Delaware Code. *Id.*

The County argues that the statutory protections afforded agricultural uses pursuant to Section 2601(b) only apply if the uses are deemed agricultural pursuant to 9 *Del. C.* § 8335 and as such, if a portion of the parcel in question is utilized for non-agricultural purposes, such non-agricultural portions may be regulated and subject to roll-back taxation. *Appellant’s Brief at 5.* The County emphasizes Section 2601(b)(1), which states in pertinent part, that the County may not regulate any land, building, greenhouse or structure if they are “assessed pursuant to §8335 of [title 9]” 9 *Del. C.* § 2601(b)(1).

The County argues that pursuant to 9 *Del. C.* § 8335(d)(3), whenever land in agricultural use is applied to a non-agriculture use, the County may impose roll-back taxes upon the property. However, when only a portion of a larger piece of land is applied to non-agricultural use, the roll-back tax is to be applied only to that part of the land in non-agricultural use and the rest of the land remains eligible for valuation under the farmland assessment. 9 *Del. C.* § 8335(d)(4). Section 8335(d)(4) places the burden upon the County to show that land is ineligible for farmland assessment.¹

The County also argues that precedent dictates that the County may regulate non-agricultural uses on parcels that also happen to contain agricultural uses. In support of this position, the County cites *Mosley v. Board of Assessment Review*, 2000 WL 303326 (Del.Super.Ct.). In *Mosley*, the owner of a 180 acre parcel developed a golf course that spanned 128 acres of the parcel. *Id.* at *1. New Castle County determined that the remaining 52 acres were not being used for agricultural purposes, and removed the agricultural assessment from the property, and charged roll-back taxes against the owner on the 52 acres. *Id.* at *2. The Superior Court found that the County met its initial burden to show that the property no longer qualified for farmland assessment, based upon its receipt of the site plan for the golf course and visits to the site by an assessor. *Id.* at *4. The court held that the majority of the parcel was in use by the golf

¹ Specifically, § 8335(d)(4) provides:

Notwithstanding anything in this chapter to the contrary, whenever land in agricultural use is applied to a use other than agriculture, and such land is but a portion of a larger tract of land, the remainder of which continues in agricultural use, roll-back taxes as provided herein shall be payable only with respect to the portion of the land which is applied to a use other than agricultural, and the remainder of the land which continues in agricultural use shall remain eligible for valuation under §§ 8330-8337 of this title, provided the criteria for land use set forth under § 8333 continue to be satisfied. The owner of the land which continues in agricultural use shall be required to apply for eligibility for valuation, and the burden for establishing ineligibility shall rest with the assessing authority.

course at the time of assessor's visits. *Id.* at *3. Consequently, the burden shifted to the taxpayer to rebut the presumption that the property was no longer eligible for farmland assessment and to prove that any portion of the parcel was entitled to such protection. *Id.* The court ultimately found that the property owner failed to submit any evidence that would indicate that the 52 acres qualified for reinstatement as farmland and as such, was subject to roll-back taxation. *Id.* at *5. In their Appeal Brief, the County submits that in coming to this conclusion the *Mosley* Court recognized that a portion of a parcel could be used for agricultural purposes and be afforded the agricultural exemption while the remaining portions devoted to non-agricultural uses would not pursuant to 9 *Del. C.* § 8335(d)(3) and (4). *Id.* at *4; *Appellant's Reply Brief In Support of Appeal* at 8.

The County's reliance on *Mosley* has merit. The difficulty with this argument however, is that *Mosley* involved a removal of the agricultural assessment that was completed prior to regulation. In *Mosley*, New Castle County met its initial burden to show that the property no longer qualified for farmland assessment, based upon a site plan for defendant Mosley's golf course and corroborated by visits to the site by an assessor. *Id.* at *4. Based on the information set forth by New Castle County, the *Mosley* Court found that a majority of the parcel (over 60%) was devoted to the golf course. *Id.* at *3. In the present case, there has been no re-assessment of the Property. Pursuant to Section 8335(d)(4) the burden is upon the County to show that the Appellee's parcel is ineligible for farmland assessment. *Id.* at *3 citing, 9 *Del. C.* 8335(d)(4). As such, the County would need a compelling reason to re-assess the

Property. The County argues, and the Court is in agreement that the use of the land must be taken into consideration in making a statutory inquiry; however, without a factual inquiry, it is impossible to determine whether Appellee's use of the Property was non-agricultural in nature. Once land is assessed as farmland, the better procedure would be for the County to reassess before seeking to regulate. However, it is unclear whether this is required, because such would permit unauthorized use without consequence. As such, the County must be allowed to put forth facts which show the land is subject to regulation.

Turning to the second issue before this Court is whether the Justice of the Peace Court abused its discretion by dismissing the County's action prior to a hearing on the merits. Pursuant to Court of Common Pleas Criminal Rule 39(f) this Court reviews decisions from Justice of the Peace on the record under 10 *Del. C.* § 9902. The scope of review is limited to correcting errors of law and determining whether the factual findings are sufficiently supported by the record and the product of an orderly and logical deductive process. *State v. Blank*, Del.Super., Slights J. (June 26, 2001) 2001 WL 75532, *3. To warrant reversal this court must find that the lower court's ruling was an abuse of discretion and the factual findings were clearly erroneous. *State v. High*, Del.Super., Toliver, J. (March 7, 1995) 1993WL 314494, *2. Delaware Courts have held that, an "abuse of discretion occurs when the judgment exercised by the trier-of-fact is manifestly unreasonable." *General Motors Corp. v. Farmer*, 1990 WL 127815 (Del.Super.Ct.) at *2. An abuse of discretion occurs if the trial court's decision is based

on “clearly unreasonable or capricious grounds.” *Bultron v. State*, 897 A.2d 758, 762 (Del.Super. 2006) citing, *Wright v. State*, 768 A.2d 472 (Del.Super. 2001) (Order).

Following Augustiewicz’s motion for reargument, the Justice of the Peace Court dismissed the violations holding that the County lacked jurisdiction pursuant to *9 Del. C. § 2601(b)*. However, the County’s authority to regulate is only limited where the property is assessed and actively devoted to agricultural purposes. The County under the statute is entitled to put forth facts in support of its position that the property is not devoted to agricultural uses. Preventing the County this opportunity is to foreclose a hearing on the merits for which it is entitled.

Accordingly, the Justice of the Peace Court’s order dismissing the case for lack of jurisdiction is reversed. The case is remanded for trial on the merits.

SO ORDERED this 11th day of July, 2008

Alex J. Smalls
Chief Judge