

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ADJILE, INC., STANLEY	§	
WOJCIECHOWSKI, HERSHEY	§	No. 566, 2004
WOJCIECHOWSKI, READWAY	§	
INC., TRUSTEE; AND STANLEY	§	
C. LOWICKI,	§	
	§	Court Below: Superior Court
Defendant Below	§	of Delaware in and for
Appellant,	§	New Castle County
	§	
v.	§	
	§	
CITY OF WILMINGTON, A	§	No. 04A-02-001
MUNICIPAL CORPORATION	§	
UNDER THE LAWS OF THE	§	
STATE OF DELAWARE,	§	
DEPARTMENT OF LICENSES	§	
AND INSPECTION, VACANT	§	
REGISTRATION INSPECTION	§	
REVIEW APPEAL DEPARTMENT,	§	
TODD COLLINS, BOARD OF	§	
LICENSES AND INSPECTIONS	§	
REVIEW, DONALD L. GOUGE,	§	
JR., MAMIE BAYNARD,	§	
PATRICK CALLAHAN, PAUL	§	
IGNUDO, GLADYS SPIKES,	§	
BOARD MEMBERS,	§	
	§	
Plaintiff Below	§	
Appellees.	§	

Submitted: March 14, 2005

Decided: May 12, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 12<sup>th</sup> day of May 2005, on consideration of the parties' briefs, it appears to the Court that:

(1) The petitioners-appellants, Adjile, Inc., Stanley Wojciechowski, Hershey Wojciechowski, Readway Inc. and Stanley C. Lowicki (collectively, "Adjile"), appeal from a decision of the Superior Court, which affirmed a decision of the Board of License and Inspection Review of the City of Wilmington (the "Board"). The Board denied Adjile's appeal of the Annual Registration of Vacant Buildings and Registration Fees (the "registration fees") assessed on Adjile's properties.<sup>1</sup> We conclude that the Superior Court did not commit legal error by upholding the constitutionality of the ordinance and denying Adjile relief. Accordingly, we affirm.

(2) On May 6, 2003, the Wilmington City Council passed an ordinance that required the owners of vacant buildings to register their properties with the City of Wilmington (the "City").<sup>2</sup> The vacant properties would also be subject to an annual fee based on the length of time they had been vacant. The ordinance had multiple purposes, including addressing the inherent problems associated with vacant buildings, the depreciating effect on surrounding

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<sup>1</sup> The properties at issue are located at 701 North Harrison Street, 709 West 10th Street, and 2712 Tatnall Street in Wilmington, Delaware.

property values, increased drug activity, prostitution and other health-related issues. On July 25, 2003, the City gave notice to Adjile of the new ordinance and the amount of the new fee that would be assessed on its properties in statements to be issued on November 15, 2003.<sup>3</sup> Adjile was also given a copy of the new ordinance and a notice explaining the appeals process.

(3) Adjile received Vacant Property Statements, dated November 15, 2003, and promptly submitted individual written appeals for each property with the \$50 filing fees to the City. Adjile's appeal of the registration fees was scheduled to be heard at a public Board meeting on January 12, 2004. It further appears that the hearing notice was incorrectly sent to the wrong address, but Adjile's counsel learned of the hearing prior to that date and agreed to proceed with the hearing as scheduled.

(4) At the hearing, Adjile's counsel testified that the properties, although not occupied by any individuals, were not vacant pursuant to the ordinance because the properties were maintained and not in disrepair. Adjile's counsel also testified that the properties were either available for sale or were being

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<sup>2</sup> WILMINGTON, DEL., CITY CODE ch. 4, § 4-27, 125.0.

<sup>3</sup> The registration fees were assessed on Adjile's properties as follows: \$2,000 for 701 North Harrison Street; \$3,500 for 709 West 10th Street; and \$3,500 for 2712 Tatnall Street.

prepared for sale. The Board also heard from a City Inspector and neighbors of one of the vacant properties, who disputed Adjile's claims. Neighbors of the 709 West 10th Street property, which Adjile has owned since 1970, claimed, and Adjile conceded, that the property has been vacant since 1974. The neighbors also testified that offers to buy the property have been made to Adjile, but the offers were rejected. The neighbors' testimony about the property's state of disrepair was supported by numerous complaints to the City. In addition to the poor condition of the property, the neighbors claimed that drug activity and prostitution occurred at the 709 West 10th Street premises.

(5) On January 12, 2004, Adjile was notified via certified letter of the Board's denial of its appeals. The Board explained that Adjile had not satisfied its burden to prove that the properties were not vacant and not subject to the registration fee. The Board noted the testimony of the City's witnesses in support of its decision. Adjile appealed the Board's decision to the Superior Court. The Superior Court permitted a certiorari review of the Board's decision, but ultimately affirmed the decision of the Board. This appeal followed.

(6) The standard of certiorari review is different than review on appeal

“because review on certiorari is on the record and the reviewing court may not weigh evidence or review the lower tribunal’s factual findings.”<sup>4</sup> A board’s decision is not reviewed on the merits of the case, but on “the record to determine whether the lower tribunal exceeded its jurisdiction, committed errors of law, or proceeded irregularly.”<sup>5</sup>

(7) We will first address the arguments raised by Adjile directed to the ordinance itself. Those arguments include Adjile’s contention that the Superior Court committed reversible error because the City did not have authority to raise tax revenue by levying a special tax against a selected class of owners of real estate, the ordinance is beyond the scope of its stated purpose and the ordinance is an unlawful *ex post facto law* that is ambiguous. We reject Adjile’s contentions on the basis of and for the reasons assigned by the Superior Court in its well-reasoned decision dated November 30, 2004.

(8) Adjile next argues that the Board did not comply with its regulations in conducting the hearing. Specifically, Adjile claims that it was prejudiced because the City presented witnesses without the prior knowledge of Adjile’s

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<sup>4</sup> *Christiana Town Center, LLC v. New Castle County*, 2004 Del. LEXIS 576, at \*5 (Order) (citing *Reise v. Board of Bldg. Appeals of the City of Newark*, 746 A.2d 271, 274 (Del. 2000) (citing *In re Butler*, 609 A.2d 1080, 1081 (Del. 1992))).

<sup>5</sup> *Id.* (citing *Reise*, 746 A.2d at 274) (citing Wooley, Delaware Practice, Volume I, § 896).

counsel. We find this argument unpersuasive. The Board's Rules and Regulations (the "Rules") for reviewing decisions of the Department of Licenses and Inspections ("L&I ") provide that both the petitioner and L&I will have the opportunity to present their case.<sup>6</sup> The Rules also provide that all witnesses giving testimony will be sworn. It can be reasonably inferred that parties appearing at these hearings will bring evidence to support their cases, including witness testimony. We therefore conclude that in conducting the hearing on the case at issue, the Board complied with its regulations, and Adjile's ability to present its case was not impaired. Accordingly, the Superior Court committed no legal error.

(9) Adjile finally raises several procedural due process claims. Due process provides "the right to receive notice and to be heard 'at a meaningful time and in a meaningful manner,' prior to the deprivation of a protected interest."<sup>7</sup> The right of due process is flexible and should be applied "as the particular situation demands."<sup>8</sup> Due process minimally requires "some kind of notice and hearing as a preface to curtailment of constitutionally secured

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<sup>6</sup> WILMINGTON, DEL, BOARD OF LICENSE AND INSPECTION REVIEW RULES AND REGULATIONS, art. 4, § 1.

<sup>7</sup> *Slawik v. State*, 480 A.2d 636, 645 (Del. 1984) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

<sup>8</sup> *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

property interests.”<sup>9</sup> To determine what type of due process is required, this Court has considered three factors: “*first*, the private interest that will be affected; *second*, the risk of an erroneous deprivation of such interest and the probable value, if any, of additional or substitute procedural safeguards; and *finally*, the State interest, including the function involved, and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.”<sup>10</sup>

(10) Adjile's interest in avoiding the registration fee was not adversely affected by the hearing provided by the Board. The hearing sufficiently afforded Adjile the opportunity to bring its appeal of the registration fee. The nature of the proceeding did not require additional procedures, such as discovery, but was appropriate for the function involved. In the present appeal, Adjile claims that it was denied due process because the City did not provide proper notice of the hearing, it was not able to present evidence contesting the validity of the ordinance, the Board failed to provide the rules and regulations for the review process and the Board failed to provide a complete transcript of the hearing. We find Adjile's due process claims unpersuasive.

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<sup>9</sup> *Id.* (citing *Goldberg v. Kelly*, 397 U.S. 254, 266-71 (1970)) (emphasis in original).

<sup>10</sup> *Id.* at 645-46 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335-36 (1976)).

(11) Although the City concedes that the notice of the hearing was initially sent to an incorrect address, the record indicates that Adjile's counsel was informed of the hearing date prior to the hearing, and he agreed to proceed on the scheduled date. In addition, Adjile's argument that it was not able to present evidence of the validity of the ordinance fails because the Board hearing was not the proper venue for such an argument, and this issue was sufficiently addressed by the Superior Court on appeal. Adjile was also not denied due process because the Board allegedly failed to supply Adjile's counsel with copies of the rules and regulations for the review process. Adjile was given notice of the ordinance in July 2003, and that notice contained a copy of the new ordinance and an explanation of the appeals process. Adjile was therefore sufficiently notified of the impact of the new ordinance. Furthermore, Adjile was provided notice and the opportunity to be heard, and the hearing proceeded without objection by Adjile. Finally, Adjile was not deprived due process because the transcript of the hearing was not complete, as the substance of the testimony presented at the hearing is sufficiently recorded in the transcript. For these reasons, we conclude that the Superior Court did not commit legal error in determining that Adjile was not deprived procedural due process.



NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of  
the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice