

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

ADJILE, INC.,)
STANLEY WOJCIECHOWSKI,)
HERSHEY WOJCIECHOWSKI,)
READWAY, INC., TRUSTEE,)
STANLEY C. LOWICKI, WALTER)
LOWICKI, TRUSTEE OF WALTER)
LOWICKI REVOCABLE TRUST,)
JANEVE CO., INC.)

Plaintiffs in Error/ Petitioners/)
Appellants Below)

v.)

C.A. No. 07A-08-009 WCC

CITY OF WILMINGTON, a Municipal)
corporation under the laws of the State of)
Delaware, DEPARTMENT OF LICENSES)
AND INSPECTION, JEFFREY J.)
STARKEY, Commissioner, BOARD OF)
LICENSE AND INSPECTION REVIEW,)
DONALD L. GOUGE, JR., Chairman.)

Defendants in Error/ Respondents/
Appellees Below.

Submitted: March 3, 2008
Decided: June 30, 2008

Memorandum Opinion

**Appeal by *Writ of Certiorari* from Board of License and Inspection Review.
DENIED.**

Stanley C. Lowicki, Esquire, 830 West Street, Wilmington, Delaware 19801.
Attorney for Plaintiffs in Error/Petitioners.

Brenda James-Roberts, First Assistant City Solicitor, Louis L. Redding
City/County Building, 800 N. French St. 9th Floor, Wilmington, Delaware 19801.
Attorney for Defendants in Error/Respondents.

CARPENTER, J.

Introduction

Before the Court is an appeal by *certiorari* of the decision of the Board of License and Inspection Review (“Board”) denying the request of Adjile Inc., Stanley Wojciechowski, Hershey Wojciechowski, Readway Inc. Trustee, Stanley C. Lowicki, Walter Lowicki, Trustee of Walter Lowicki Revocable Trust and Janeve Co., Inc. (“Appellants”) to waive assessment fees on certain properties. Upon review of the briefs filed in this matter, the decision of the Board is hereby affirmed and the appeal is denied.

Facts

In early November, 2006, the Department of Licenses and Inspections issued vacant building registration assessment fees¹ to Appellants as owners of the following properties: 701 North Harrison Street, 709 West 10th Street, 1309 West Street, 1309 North Lincoln Street, 2600 West 18th Street and 2712 Tatnall Street², all in Wilmington, Delaware. Because the Department found the properties to be vacant for a number of years, the assessments totaled \$14,000.00. Subsequently, Appellants appealed and submitted a request for waiver of the assessment fees, which was denied by the Commissioner of Licenses and Inspections on December 22, 2006.

¹The fees were assessed pursuant to the Wilmington City Code section 4-27, 125.0, titled, “Annual Registration of Vacant Buildings and Registration Fees,” as amended by Ordinance 03-019.

²The Court notes that most of these properties are the same ones that were the subject of the Court’s opinions in 2004 and 2007.

The parties appeared at a hearing before the Board of License and Inspection Review on July 16, 2007, where Appellant Lowicki moved for the recusal of Board Chairman Gouge on the ground that the Chairman was personally biased against him.³ Appellant's motion for recusal was denied. In addition, the Board did not find merit in Appellants' arguments that the properties in question were not "vacant" as defined by the Wilmington Code, nor that the fees assessed were illegal. The four-member Board voted unanimously to deny Appellants' request for waivers on the properties.⁴ Appellants then filed the present request for a *writ of certiorari* with this Court.

Standard of Review

This Court may review an appeal from the Board through a *writ of certiorari*.⁵ This Court's role regarding review on *certiorari* is limited to a review of the record

³Appellant Lowicki has raised this motion in his past two appearances before the Board, both of which were denied for lack of evidence. The Supreme Court has previously held that "the record fails to affirmatively show that the Board proceeded illegally or manifestly contrary to law when it denied the Appellants' motion for recusal." *Adjile Inc., v. City of Wilmington*, 2007 WL 2028536 at *2 (Del. Super. June 29, 2007, Carpenter, J.).

⁴The property at 1309 North Lincoln Street was not denied a waiver because Appellant Lowicki withdrew the waiver request and paid the \$500.00 assessment fee. Additionally the property at 1309 West Street was granted a conditional waiver, provided that Appellants pay all past due fees within 30 days of the Board's decision dated August 2, 2007. *See* Decision of the Board at 2.

⁵*Goldberg v. Wilmington*, 1992 WL 114074, at*1 (Del. Super. May 22, 1992). (Under Delaware law, a *writ of certiorari* is "a common law writ [that] lies from the Superior Court inferior tribunals, to correct errors of law, to review proceedings not conducted according to law, and to restrain an excess of jurisdiction.").

to determine whether the lower tribunal exceeded its jurisdiction, committed errors of law, or proceeded irregularly.⁶ It is not the function of Court on *certiorari* review to address the record on its merits or to consider the sufficiency of the evidence.⁷ As the Delaware Supreme Court stated:

A decision will be reversed on jurisdiction grounds only if the record fails to show that the matter was within the lower tribunal's personal and subject matter jurisdiction. A decision will be reversed for an error of law committed by the lower tribunal when the record affirmatively shows that the lower tribunal has 'proceeded illegally or manifestly contrary to law.' A decision will be reversed for irregularities of proceedings if the lower tribunal failed to create an adequate record to review.⁸

It is with these parameters in mind that the Court reviews the Board's denial of Appellants' appeal. However, before doing so the Court believes it is important to note that this is now the third *certiorari* petition filed by these Appellants, all with nearly identical issues, and the Court's prediction in its opinion in 2007 that this would become a request to annually review the actions taken by the Appellee's has come true. Having issued two previous opinions the Court does not intend to again review the same alleged errors that are claimed to exist by the Appellants which have

⁶*Adjile, Inc. v. Wilmington*, 875 A.2d 632 (Del. 2005)(citing *Christiana Town Center, LLC v. New Castle County*, 865 A.2d 521 (Del. Super. 2004).

⁷*Shoemaker v. State*, 375 A.2d 431, 437 (Del. 1977).

⁸*Christiana Town Center*, 865 A.2d 521 (Del. Super. 2004).

been previously denied by this Court and affirmed by the Delaware Supreme Court. Therefore some of the arguments made by Appellants will be only summarily addressed as having been previously decided and denied.

Discussion

I. Recusal of Chairman Gouge

The Appellants' first contention is that it was reversible error for the Chairman of the Board, Mr. Gouge, not to recuse himself from the hearing in this matter. It is Appellants' position, as it has been in previous cases before the Board, that Mr. Gouge is biased against Appellants, Mr. Lowicki in particular. The Court finds that Appellants have presented no new evidence or arguments that would warrant recusal of Mr. Gouge from his position as Chairman of the Board for the hearing in this matter. As such, the Appellants have failed to show the Board proceeded illegally or manifestly contrary to law and Appellants' *writ of certiorari* on this issue is denied.

II. Validity of Wilmington Code

Appellants claim the Department of Licenses and Inspections has no authority to issue the vacant building registration fee assessments and lacks jurisdiction to make assessments for "lawful past use of property to raise revenue."⁹ It is well-

⁹Appellants' Opening Br. at 11.

settled law that Section 4-27, 125.0 of the Wilmington Code is a valid exercise of the City's police power under the City Charter. The Supreme Court affirmed this Court's decision in *Adjile v. City of Wilmington*, where it stated,

Vacant buildings, such as those owned by the Appellants, without proper care, can be not only a nuisance and blight on the effort to vitalize the City, but a haven for crime and a community eyesore. This in turn requires the expenditure of funds for police activity and examination by the Department of License and Inspection and it is proper for property owners who are at best speculating on the future values of these properties to be assessed a fee to compensate the City for such expenditures. The City's action here is appropriate and there was no error of law in the enforcement of this statute. The Court finds the Appellant's unlawful taxation argument to be without merit.¹⁰

Because both the Superior Court and the Supreme Court have previously addressed this issue, the Court rejects any arguments by Appellants that the ordinance at issue is unconstitutional, unauthorized, or that the Department of Licenses and Inspection is without jurisdiction to issue assessments.¹¹ Accordingly, *certiorari* is denied on these issues.

¹⁰*Adjile v. City of Wilmington*, 2004 WL 2827893 at *3 (Del. Super. Nov. 30, 2004, Carpenter, J.), *aff'd*, 2005 WL 1139577 at *2 (Del. June 14, 2005).

¹¹In addition, it appears Appellants are trying to raise an issue of what they term "fraudulent billing" by the Department of Licenses and Inspections. *See* Appellants Opening Br. at 11. Not only do Appellants offer no concrete evidence of such conduct, this is not a matter for the Court to address in this appeal, nor did the Board address it at the hearing or in its decision.

III. Denial of Appellants' Request for Waivers

Next Appellants present an alternative argument, not conceding that the assessments fees are valid, but suggesting that if they were, the properties satisfied the conditions necessary to obtain waivers of the fees. Waivers of registration fees are granted if the owner demonstrates with satisfactory proof any of the following: “that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building” (and demonstrates the anticipated length of time for the work); “that he/she was actively attempting to sell or lease the property during the vacancy period;” and “has paid all past due vacant registration fees and all other financial obligations and/or debts to the City of Wilmington which are associated with the vacant property. . . .”¹²

As previously noted, the factual conclusions reached by the Board are beyond the limited review of a *certiorari* writ and as such, these contentions will not be considered by the Court. In simple terms the Appellants argue they have presented sufficient evidence to support a waiver and the Board has concluded the waiver provisions of the statute have not been met. There is nothing to suggest the Board's actions were an error of law or that the proceedings were conducted irregularly.

¹²Wilm. C. § 4-27, 125.0(b)(5)(i-iv).

Therefore, the *writ of certiorari* as to these factual findings will be denied.

The only legal issue regarding the waiver provision that is subject to review was whether 709 West 10th Street was illegally denied a waiver because that property had received a waiver in the past. Counsel for the City testified that “the intent of the ordinance was that it be one waiver per property and not one [waiver] per year.”¹³ Another Board member noted, “[s]trictly speaking, that’s how this Board and the City has interpreted it, as a one-time waiver. . . per property, per owner.” Mr. Lowicki maintains the position that the waiver applies to each “bill,” which in his case would mean once a year.¹⁴

It is well-settled law in Delaware that the language of a statute shall be given its plain meaning so long as the language is clear and unambiguous.¹⁵ A statute is considered “ambiguous” when it is “reasonably susceptible to different conclusions or interpretations.”¹⁶ Before listing the criteria for a receipt of a waiver, the ordinance states “A *one-time waiver* of the registration fee may be granted by the Licenses and

¹³Tr. of Hrn’g. of Bd. of License and Inspection Review at 9 [hereinafter Tr. at ___].

¹⁴*Id.*

¹⁵*See Newtowne Village Service Corp. v. Newtowne Road Development Co.*, 772 A.2d 172, 175-76 (Del. 2001).

¹⁶*Id.* at 175. *See also, Snyder v. Andrews*, 708 A.2d 237, 241 (Del. 1998); *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985).

Inspection Review Board upon application of the owner. . .”¹⁷ (Emphasis added). Because the text of the ordinance itself provides for a “one-time waiver. . . upon application of the owner,” that language should be given its plain meaning. It is hard to fathom an interpretation other than the one offered by the City – that the ordinance provides for one waiver per owner for the duration of his ownership. The Court agrees with the City that the language of the ordinance is clear and unambiguous, and not “susceptible to different conclusions and interpretations.” Therefore, under the law of statutory construction in Delaware, the plain meaning of the ordinance controls and the Court need not attempt further statutory interpretation. Because 709 West 10th Street had already received a waiver in the past, the Board found it ineligible for a second one at the hearing, and the Court finds the Board did not err in its ruling.

IV. Occupancy

Appellants contend that the Board erred in holding that the properties at issue were not “occupied” as defined by the Wilmington Code.¹⁸ This Court has previously

¹⁷Wilm. C. § 4-27, 125.0(b)(5).

¹⁸“Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric,

held that the line between a vacant and occupied structure must be determined on a case by case basis.¹⁹ This fact-based inquiry is a task for the Board, and the Court will not disturb their factually based conclusions on *certiorari* review. While in its previous opinions the Court has reviewed the factual determinations of the City as to the Appellants' properties in a vain attempt to "help in this dispute"²⁰ this effort appears to have had no effect on the litigation. As such the Court will not review the factual determination made by the Appellee as it is beyond the purview of *certiorari* review.

VII. Due Process and Equal Protection Arguments

Finally, the Appellants claim they were denied due process and equal protection of the law when the Board decided to take previous hearings involving the same properties and parties under consideration as part of the record. Specifically, Appellants appear to take issue with the fact that some Board members present at the hearing on July 16, 2007, were not present for prior hearings on these properties. The

gas, heating, water and sewer services; a valid city business license, or the most recent federal, state, or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of pre-rental inspection." Wilm. C. § 4-27, 125.0(b)(1)(C).

¹⁹*Adjile v. City of Wilmington*, 2007 WL 2028536 at *4 (Del. Super. June 29, 2007).

²⁰ *Id.*

Court does not see how this triggers due process or equal protection safeguards. As the Supreme Court has previously noted, “Due process provides ‘the right to receive notice and to be heard’ . . .”²¹

Common sense seems to indicate that an incorporation of the prior hearings would aid in the efficiency of the proceeding, and provide direction to Appellants to focus on new evidence, rather than rehash arguments previously rejected by the City and the Court. Appellants point to no authority to support the proposition that Board members may not refer to prior proceedings involving the same parties. Furthermore, after a review of the transcript of the Board’s July 16, 2007 hearing, it appears to the Court that any reference to a prior proceeding, when made, was made clearly and unambiguously by a Board member, and it strains the imagination that the other Board members would be confused by the record. The Court also finds irony in Appellants’ argument that it was improper for the Board to consider past hearings, when all Appellants appeared to do at the July 16, 2007 hearing was reiterate the same arguments raised at those prior proceedings. Therefore, based on the record, the Board did not err in taking the record of prior hearings under consideration, when the same parties, properties and arguments were involved, and such a practice did not render the proceedings “irregular.” For these reasons the Court denies *certiorari* as to this issue.

²¹*Adjile*, (Del. 2005 WL 1139577 at *2).

Conclusion

For all the foregoing reasons, the Appellants' *writ of certiorari* is hereby
DENIED.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.