

The facts surrounding this appeal were set forth in the Court’s opinion of April 27, 2007 in Civil Case No. 06A-06-012 WCC when the matter was remanded to give the Board an opportunity to explain the reasoning for their decisions and therefore will not be repeated in detail.¹ The Court requested the Board file an opinion which articulated its finding of facts and legal conclusions based upon the denial of the exemption request made by the Appellant in regards to their tax status for 2005. The Court also included four specific questions it wanted the Board to address. Instead of taking the opportunity to issue an orderly, well-reasoned opinion to support its decision, the Board simply issued a two-page document that reviewed the questions asked by the Court. In an attempt to understand their responses, the Court reviewed the transcript of the hearing on remand. The Court notes that some critical discussions in the transcript were “inaudible” and in the Court’s view, it is not convinced the Board fully appreciated the significance of the remand and the issues they were being asked to address. To argue as the County does in its brief that the Board’s comments reflected a “product of sound decision making” stretches one’s imagination and simply cannot be supported by what has been presented to this Court. While the Court had considered again remanding the matter, it has concluded based upon what has occurred in the past that this would be a futile exercise and believes

¹ The Court apologizes to the parties for the confusion on how to file the supplemental record and opinion by the Board and for requiring the parties to file a new civil action. It appears this was an error by the Court in failing to effectively communicate to staff exactly what was required of the parties on remand.

justice would best be served by attempting to decide the matter on what has been presented to the Court to date.

The starting point to resolve this matter begins with a request by counsel for One River Place, LLC in June of 2005 to combine tax parcels #26-042.00-007 ("parcel 007") and parcel #26-042.00-027 ("parcel 027") into one tax parcel. This request was granted by the County on June 7, 2005 by Melissa Hughes, a planner in the Department of Land Use indicating the parcels would be combined under the parcel 027 number. As background, these parcels were used to build the AAA building at the Riverfront location and once completed logically represented a single parcel for tax purposes. It is perhaps also important to note that prior to June of 2005 both parcels would have enjoyed tax exempt status. Parcel 027 was owned by the City of Wilmington, where a governmental exemption applied, and parcel 007 was owned by the Riverfront Development Corporation which had available to it a quasi-government exemption.² It was not until the parcels were transferred to One River Place, LLC in June of 2005 that the exemption status was affected. It is also critical to note that there appears to be no dispute that upon proper application, One River

² The Court notes that part of the confusion regarding the status of parcel 007 was created because the Riverfront Development Corporation paid the prior year taxes even though they were exempt from doing so. It appears such conduct may have caused the County to set into motion the computerized assessment notice at issue here.

Place LLC would be eligible for a new construction exemption for this property under the County's taxing structure. However, to obtain this exemption the taxpayer must make a request of the County to grant them the exemption and would have been required to do so within 30 days of being notified of the change of the parcel's assessment status. So to put this dispute in some perspective, both parcels were exempt from taxation prior to June of 2005 and they would have continued to enjoy a similar status for an additional ten years under the new construction exemption.³ Unfortunately an assessment notice was generated and apparently mailed to the Appellant even though they deny receiving it, and because they did not respond to that assessment notice within 30 days, the County is attempting to collect school and property tax billings totaling \$136,726.88. The question now before this Court is whether there is substantial evidence to support the finding by the Board that the County provided proper notice of the assessment change at the end of June of 2005 and whether the taxpayer's request for an exemption filed on September 16, 2005 was untimely.

The assessment change notice that is at issue in this litigation reflects that the assessment change on parcel 007 was to be effective on July 1, 2005. While this is

³ The new construction exemption would be reduced by 10% each year during the 10 year period until it was exhausted.

a critical document to the process as it notifies the taxpayer of the change in the tax status of their property, surprisingly the document is not dated. Therefore, to establish that the document was properly mailed to the taxpayer so that they would have received notice of this change, the County introduced the testimony of Emma Prinski, Assessment Services Supervisor, to testify as to the normal procedures associated with the production and mailing of these documents. While unfortunately the transcript is disrupted by numerous inaudible references, it is sufficient to generally piece together the procedures utilized to generate these notices. As to whether there is evidence to support the mailing of this notice to the taxpayer, Ms. Prinski's testimony stated the following:

Ms. Hay: Do Supplemental Change Notices ever have a date...(inaudible)...the register that actually says the date on the notice. Are they dated or is the case that the effective date is the date when...

Ms. Prinski: That triggers the...

Ms. Hay: ... the time begins to run, the clock begins to run...

Ms. Prinski: The effective date...

Ms. Hay: ...(inaudible)...the stamp is (inaudible).

Ms. Prinski: Yes. We do have it. It is initialed and dated by the technicians when it is done. We do have that as part of the record.⁴

Now the Court can fairly speculate that this testimony related to the mailing of the notices and that there is some “stamp” used and some other document “initialed and dated by the technicians” to support that they have completed the process and mailed the document. However, the above is a good example of the difficulty the Court encounters when attempting to decide an issue with an incomplete transcript, and unfortunately the Court is unable to find any of the documentation referenced above entered into the record before the Board. In fact it appears that no documentary evidence to actually support that the document was mailed was introduced. The Court suspects that the County official, if well prepared, could have told the Board exactly when the notice was mailed and would have had documentation to support those representations. But the Board and the Court’s decisions must be based upon the record presented and the fact that such information may be available in other documents not introduced in these proceedings is not a basis to make conclusions that are clearly adverse to the taxpayer. In spite of these concerns, the Court, absent some clearly flawed process is required to give deference to factual conclusions reached by

⁴Tr. of Hr’g of Bd. of Assessment Review, May 17, 2006, at 21.

an administrative board.⁵ On remand the Board indicated that they found that the County's presentation on this issue was credible to establish that the notices were mailed around the date of the "effective date" and while a clearer record could have easily been presented, the Court finds there is sufficient evidence to support the Board's conclusion on this issue.

Unfortunately, it appears that once the Board made this finding it simply proceeded to find that the taxpayer had failed to file its exemption request within 30 days and thus found the filing made in September to be untimely. While this is an easy and convenient jump, it fails to address the legal question of whether the assessment notice was properly issued in the first place. When the Court asked the Board for their position on what effect the merger had on the legality of the assessment, the transcript included the following comments from the Board members:

Ms. Danneman: Did you feel any effect of the merger of the parcels had on the supplemental assessment? That was one of the questions.

Ms. Wright: Well, I don't feel that I was able to answer that question. I didn't feel justified to answer that question, so I didn't address that specifically.

⁵ See *Brandywine Innkeepers, LLC v. Bd. of Assessment Review of New Castle County*, 2005 WL 1952879 at *3 (Del. Super. June 3, 2005).

Ms. Danneman: Okay. Does anyone else have a strong feeling about that particular question? What effect, if any, the merger of the parcels had on the supplemental assessment?

Ms. Bandy: It would depend on how the notices were issued...whether or not...we're never going to...personally speaking, whenever there's a merger of parcels, there is certainly room for confusion, unless you work here and understand the whole process, but parcel splits and parcel groupings are confusing even for some of us who've worked here. I've been there. So I don't know how these were issued. Is there somebody from the County that can address some of these considerations as to the process of the split and the combination of parcels?⁶

...

Ms. Wright: Do you know if that letter was available that made reference to June 7th, that there was a letter saying that parcels were combined on June 7th?

⁶ Tr. of Hr'g of Bd. of Assessment Review, May 31, 2007 at 5-6 [hereinafter Tr. at ____].

Ms. Hildick: I'm looking for the...(inaudible)...There was a letter provided dated June 7th, 2005 from Melissa Hughes, a planner for New Castle County, to Brock Vinton of One River Place...Tab 3.

Multiple Voices: We don't have that...(inaudible)...

Ms. Hildick: These are all the exhibits provided at the hearing to you all.

Multiple Voices: ...(inaudible)...

Ms. Wright: Question. Our records are stating that the merger wasn't done until August 23rd. That's right here.

Ms. Bandy: I'm just looking for the...there might be a history note or...

Panel Member: There should be something there too.⁷

...

Ms. Danneman: I feel like I need a flow chart with every date listed down on a chalkboard, because it's impossible to keep track of it. And different people are just finding different dates...(inaudible). I don't question the decision

⁷*Id.* at 7-8.

that was made, but I question how it's being explained.

Ms. Wright: Well then let's put the dates...(inaudible)...and see what we think, because a lot of them are right here in these facts that are listed here, and we need to verify if they're correct.

Panel Member: You want me to do it?

Panel Member: ...(inaudible)...6/2/05...(inaudible)...we need to verify these...(inaudible)...conveyed tax parcel to Riverfront Development Company (inaudible)...6/6, which is one day later, RDC conveyed 027 and 007 to One River Place...(inaudible)...on June 6th, One River Place...(inaudible)...I was just verifying it...requested, One River Place requested to combine the parcels, which is here, and then on 6/7 the request was granted. Okay...now here's the first discrepancy, where 6/7 the request was granted and the County maintains the merger of the two parcels was not completed until August 23rd.

Ms. Danneman: So the County granted that request?

Ms. Wright: ...(inaudible)...this request was granted by

New Castle County on June 7th. A letter to that effect was issued to One River Place advising that it would be combined as one parcel under 027.(inaudible)..... Now, I guess we should look at...of course that may be out of order...this August 23rd date, which is number 5, that said that the two parcels were not merged until then, until August 23rd.

Ms. Bandy: That would be the change notices. That's what was sent out then, right, the change notices?

Panel Member: So, what's the difference between the request being granted to merge, and the merger being completed?

Panel Member: I'm sorry, what did you say?

Panel Member: What's the difference between the request being granted to merge, and the merger being completed?⁸

...

Ms. Wright: What effect, if any, did the merger of the parcels have on the supplemental assessment?

Panel Member: Those notices of the merger...the first

⁸*Id.* at 10-11.

notice of the merger...the permission to combine the parcels happened in June. I have no idea what effect...

Multiple Voices:(inaudible).....⁹

...

Ms. Bandy: I have a...they were combined, 7 and 27 were combined and created 27. This Assessment Change Notice was for parcel number 7, which is no longer a parcel at that point. And I think that that goes to the question number 1, that we have, what in fact they were receiving...that's where the confusion really lies on making all the other assumptions of receipt, whether or not they received an Assessment Change Notice or any kind of notification for 027. That's seems to me to be the problem. Because without that information...

Panel Member: Is there an 027 in there?

Ms. Bandy: Just the letter that they're combining the two. Is that correct...is there a change notice for that, or a history note...combining the two?

⁹*Id.* at 13.

Panel Member: Well, the request was granted on 6/7.

Ms. Bandy: But they would have...they would need to be notified of that in writing, as opposed to a letter.

Panel Member: We have...(inaudible)...letter combining them both into 027.

Ms. Bandy: And then we have a change notice that goes out for parcel 7, which really doesn't exist any more.

Multiple Voices:(inaudible).....¹⁰

The Court finds the above remarks by the Board reflect that they were confused by the issue and they have failed to articulate a clear basis for their decision that the merger had no effect on the assessment notice. As such, the only conclusion the Court can reluctantly find is that the Board's decision was arbitrary and not supported by substantial evidence on this issue.

The issue here is quite simple to the Court. The County made a decision on June 7th of 2005 to grant the taxpayer's request to merge the two parcels. There appears to be no dispute that once completed within the County's bureaucracy, the effect of this decision was that for tax purposes parcel 007 no longer existed, and all future assessments would be issued under the 027 parcel number. So what has

¹⁰*Id.* at 15-16.

unfortunately occurred here is a timing problem where the County's decision to merge the parcels did not catch up with the computerized assessment process, and the assessment change notices were issued in late June with all the improvements to the property totaling over 7.2 million added to parcel number 007. The actual completion of the merger by the Assessment Division was not done until August 23, 2005.

However, the Court finds the County is bound by the decisions made by its employees, and as of June 7, 2005, the request to merge the parcels had been granted. After this date, if the County wanted to legally issue an assessment change notice, they were required to do so under the correct parcel number. The failure to take appropriate action to timely implement this change throughout the governmental entity is a bureaucratic mistake that should not result in an adverse consequence to the taxpayer. The fact that it took nearly three months after the merger decision to internally implement the changes within the County tax system does not change the fact that a clear and unconditional granting of the taxpayer's request to merge the properties was granted in June.¹¹ The Court finds the effect of this action was that any legal assessment after June 7th was required to be issued in reference to parcel 027 and the assessment issue "around" July 1st for parcel 007 had no legal force or effect.

¹¹ The Court notes that the letter from Ms. Hughes reflects that the parcels **have been** combined under tax parcel 26-042.00-027.

The record reflects that the first actual assessment notice for parcel 027 was issued in late September and received by the Appellant on September 21, 2005 and thus their exemption request made on September 16th was timely. Since there appears to be no dispute that if the request for an exemption had been filed in a timely manner, it would have been granted, the Court finds no need for further action from the Board and orders that the exemption be granted by the County for 2005 and the taxes, if paid, be returned to the Appellant.¹²

Finally, the Court has made this decision with some hesitation since it recognizes the deference that should be given to the factual conclusions reached by an administrative board. However, it is also customary that the decisions received from an administrative board, in addition to outlining the testimony that has been presented in the proceedings, as was done here by the County, also set forth the conclusions it finds from the evidence and the legal and factual significance of those findings. Even on remand, the Board appears to fail to appreciate the necessity of explaining their decision or even why the Court would ask the questions they were presented. While the Court appreciates that the Board is made up of lay people who

¹²Having reached the conclusion set forth above, the Court need not address the issue raised by the parties regarding the interpretation surrounding Section 14.06.502a of the County Code. However, the Court would strongly suggest that if the County desires the “substantially” completed argument to prevail in the future, it should take the opportunity, now that the issue has been raised, to clarify that matter through the legislative process.

are attempting to perform this function in a fair and appropriate manner, it is also critical to recognize the significant role they play to independently ensure the County is acting properly in the taxing process it has with its citizens. This is a very important function that must be done fairly and with the common sense that they bring to the process. It is the responsibility of counsel for the Board to ensure this process is functioning properly and that their decisions are clear and are set forth in well-reasoned and legally supported opinions.

Based upon the above, the decision of the New Castle County Board of Assessment Review is REVERSED.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.