

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MAZEN and NINA SHAHIN, :
 :
 Appellants, : C.A. No. K15A-08-004 WLW
 : In and For Kent County
 v. :
 :
 :
 CITY OF DOVER BOARD OF :
 ASSESSMENT APPEALS, :
 :
 :
 Respondent. :

Submitted: November 23, 2015
Decided: January 22, 2016

ORDER

Upon an Appeal of the Decision of the
City of Dover Board of Assessment Appeals.
Affirmed.

Mazen Shahin, Ph.D. and Nina Shahin, *pro se*

William W. Pepper, Sr., Esquire of Schmittinger & Rodriguez, P.A., Dover,
Delaware; attorney for Respondent.

WITHAM, R.J.

Before the Court is the *pro se* appeal of Appellants Mazen and Nina Shahin (“the Shahins”) from a final decision by the City of Dover Board of Assessment Appeals (“the Board”) denying their appeal of the 2015 reassessment of a property located at 103 Shinnecock Road in Dover, Delaware (the “Shahin property”). After careful consideration of the record and the submissions by the parties, the decision of the Board is **AFFIRMED** for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

In 2014, the City of Dover conducted a reassessment of all property values in the city. The Shahin property was assessed at \$247,100, a number that represents a reduction of more than 13% from the property’s 2010 assessed value of \$286,700. The Shahins challenged the assessment at a hearing before the Board and requested an assessed value of \$223,100.

At the hearing and on appeal to this Court, the Shahins discussed the values of numerous houses in the neighborhood. The argument centered on recent sales prices, the 2010 assessment, the 2014 assessment, and the differences in the changes in values amongst the three categories. The Shahins discussed the four houses used by the City of Dover as comparables. These properties sold in either 2013 or 2014. They also discussed properties at 22 Shinnecock Road and 54 Shinnecock Road, both of which sold before real estate prices were affected by the 2005 recession. They further discussed the change in values of various houses in the community that were owned by people of different national origins. The Shahins argue that the City of Dover’s process of assessing property values based on the value of comparable

properties is flawed. They claim location within the neighborhood, amenities such as sunrooms, and detractors such as sinkholes in the yard should affect valuation.

The record shows that Ryan Zuck (“Zuck”) of Tyler Technologies testified as to the valuation method used in the reassessment process. He explained that four comparable properties were used in determining the value of 103 Shinnecock Road for reassessment purposes. 101 Shinnecock Road was sold for \$250,000 on December 22, 2014, which equated to a value of \$108.13 per square foot. The property was reassessed for \$249,200, which equates to \$107.78 per square foot. 104 Shinnecock Road was sold for \$220,000 on May 20, 2013, which equated to \$100.82 per square foot. The property was reassessed for \$205,200, which equates to \$94.04 per square foot. 110 Shinnecock Road was sold for \$240,000 on December 26, 2013, which equated to \$100.62 per square foot. The property was reassessed for \$231,400, which equates to \$97.02 per square foot. 19 Shinnecock Road sold for \$260,000 on April 1, 2014, which equated to \$99.23 per square foot. The property was reassessed for \$231,700, which equates to \$88.43 per square foot. The Shahins property was assessed at a value that equates to \$97.28 per square foot based on the square footage on record of 2540. The Shahins claim a square footage of 2580, which would drop their assessed value per square foot to \$95.77. The average price assessed on the four comparable properties in the 2014 reassessment equates to \$96.82 per square foot.

In deciding the appeal, the Board noted that the Shahins compared property values on the dates of purchase. Some of these properties were purchased in the 1990’s, some in the 2000’s, and some in 2005. The Board determined that comparing

assessed values in 2010 and 2014 to purchase prices at varying times was not an accurate comparison because of the extreme price differences between 1990 and 2005. The Board determined comparable sales was the proper method for determining property values and that the 2014 assessment of the Shahin property was accurate. The Shahin's appeal of their 2014 reassessment was denied.

On August 27, 2015, the Shahins filed a timely appeal of the City of Dover Board of Assessment Appeals decision with this Court.

STANDARD OF REVIEW

“A property owner seeking a reduction in assessment is faced with a substantial evidential burden at both the administrative and appellate levels.”¹ On appeal before the Board of Assessment, the property owner faces a presumption of accuracy in favor of the existing assessment that may only be rebutted by evidence of substantial overvaluation.² The burden for rebutting this presumption rests with the property owner.³ To successfully rebut the presumption, the property owner must submit evidence that is not only competent, but that is sufficient to show a substantial overvaluation.⁴ If successfully rebutted, the presumption in favor of accuracy ceases to exist.⁵ On appeal to this Court, “the Board of Assessment decision is deemed

¹ *Seaford Assocs., L.P. v. Bd. of Assessment Review*, 539 A.2d 1045, 1047 (Del. 1988).

² *Id.* (citing *Fitzsimmons v. McCorkle*, 214 A.2d 334, 337 (Del. 1965)).

³ *Shahin v. City of Dover, Bd. of Assessment*, 2011 WL 704490, at *2 (Del. Super. Feb. 28, 2011).

⁴ *Id.*

⁵ *Id.*

‘prima facie correct’ and will be disturbed only if the appellant can show that the Board acted ‘contrary to law, fraudulently, arbitrarily, or capriciously.’”⁶

DISCUSSION

The Delaware Constitution requires uniformity in tax assessments.⁷ Additionally, real estate tax assessments must be based on the property’s “true value in money.”⁸ Although the constitution requires uniformity, “[t]here is no requirement that all taxes be assessed with computer precision against all taxpayers equally . . . but rather [a requirement] that all taxpayers of the same class residing within the same district be treated equally.”⁹ The phrase “true value in money” is synonymous with “actual worth” or “fair market value,” and is defined as “the price which would be agreed upon by a willing seller and a willing buyer, under ordinary circumstances, neither party being under any compulsion to buy or sell.”¹⁰ Delaware espouses a strong preference for the use of present market value when determining the value of real estate.¹¹ This preference, however, must give way to the constitutional demand for uniformity.¹² Thus, a system of factoring present day values to a base year “is in

⁶ *Id.* (quoting 9 *Del. C.* § 8312(c)).

⁷ *Shahin*, 2011 WL 704490, at *3.

⁸ 9 *Del. C.* § 8306(a).

⁹ *Id.* (citing *Cronin v. Bd. of Assessment Review for New Castle Cnty.*, 1992 WL 52181, at *1) (internal quotations omitted).

¹⁰ *Seaford Assocs., L.P.*, 539 A.2d at 1048 (citing *State ex rel. Smith v. 0.15 Acres of Land*, 169 A.2d 256, 258 (Del. Super. 1961)).

¹¹ *Cronin*, 1992 WL 52181, at *1.

¹² *Id.*

compliance with the constitutional mandate of uniformity in tax assessment in Delaware decisional law.”¹³

In *Seaford Associates, L.P. v. Board of Assessment Review*, the appellant challenged an assessment of his property based on the method of valuation.¹⁴ The appellant “sustained its evidential burden of showing substantial overassessment through the appraisal expert who concluded that the shopping center was overassessed by double its fair market value.”¹⁵ In *Fitzsimmons v. McCorkle*, the property owners appealed the assessment of their property and provided evidence of substantial overvaluation through the use of an expert witness who testified to the present value of the property.¹⁶ The Supreme Court of Delaware upheld the Superior Court’s finding that the expert witness had presented competent evidence of substantial overvaluation and affirmed the court’s order to reduce the County’s valuation of \$127,000 to the expert’s valuation of \$80,000.

This is not to say that expert testimony is required. Under Delaware law, a property owner may give his opinion as to the value of his real estate, but the weight given to the owner’s testimony, or to any other evidence presented to the Board, is within the discretion of the trier of fact.¹⁷ In *Cronin v. Board of Assessment Review*

¹³ *Id.* (citing *Bd. of Assessment Review for New Castle Cnty. v. Stewart*, 378 A.2d 113, 115 (Del. Super. 1977)).

¹⁴ *Seaford Assocs., L.P.*, 539 A.2d at 1046.

¹⁵ *Id.* at 1048.

¹⁶ *Fitzsimmons*, 214 A.2d at 336-37.

¹⁷ *Id.*

for New Castle County, the property owner testified as to the value of his property, but failed to show that the County had substantially overvalued his home.¹⁸ He relied on the assessment of much smaller properties and further relied on his “*feeling* that approximately one-half the current value fairly reflected the factor of the present market value in [the base year].”¹⁹ Because the appellant provided no competent evidence supporting his valuation, the Board had the discretion to disregard his claim.²⁰

In the case at bar, the Shahins base their appeal on the valuation of their property as compared with other properties in the neighborhood. Because the Board’s decision is deemed *prima facie* correct, the Shahins can succeed on appeal only if they can show that the Board acted contrary to law, fraudulently, arbitrarily, or capriciously. A necessary prerequisite to this showing is the ability to overcome the presumption of accuracy in favor of the existing assessment. This will require that the Shahins provide competent evidence of substantial overvaluation.

To prove a substantial overvaluation, a property owner must provide some proof of the property’s current value. At no point in the appeal process do the Shahins offer a competent opinion on the value of their property or of the value of comparable properties in the neighborhood. Although the Shahins discuss the sales price of numerous properties over the course of years, and the valuations of certain

¹⁸ *Cronin*, 1992 WL 52181, at *2.

¹⁹ *Id.* at *3.

²⁰ *Id.*

properties in 2010 and 2014 assessments, no competing valuations are offered. The changes in a properties rank in the valuation list between the 2010 assessment and the 2014 assessment are also discussed, but there seems to be an assumption that the condition of these properties remained static, and any movement in valuation ranking must be the result of chicanery. There was no discussion of conditions that may have affected the change in valuation rankings such as additions or upgrades, or allowing a property to deteriorate.

The Shahins claim that the City of Dover's process of determining a price per square foot of living space from comparable properties is not a proper method, and argue that an appraisal should also consider the square footage of structures such as sunrooms, porches, and garages. The Shahins further claim that an appraisal should consider the age of the property, its size, type of structure, and building materials used in the construction of the house. The Shahins labor under the misconception that the City of Dover determined one price per square foot to be applied to every house in their neighborhood, or possibly one price per square foot to be applied to each model of house in their neighborhood. However, the evidence shows that no standard price per square foot was used. This indicates that factors other than the size of the house were taken into consideration in the assessment process.

Unlike the appellants in *Seaford Associates* and *Fitzsimmons*, the Shahins offer no expert testimony to support their claim or to show a substantial overvaluation of their property. Moreover, despite arguing for an alternative valuation method, the Shahins never apply an alternative method in an effort to prove a substantial

overvaluation of their property. They argue that their property has a sink hole in the front yard, but never describe how or to what extent the sink hole would affect the value of their property. Like the appellant in *Cronin*, the Shahins presented their own opinion on the value of their property. However, where the appellant in *Cronin* offered properties much smaller than his as evidence to support his valuation, the Shahins offered no evidence at all.

To succeed in their appeal of the Board's assessment, the Shahins were required to present competent evidence of overvaluation. Because they presented no evidence to support their requested valuation of \$223,100, they cannot show that the assessment constituted a substantial overvaluation of their property. Because the Shahins cannot show that the assessment constituted a substantial overvaluation of their property, they cannot show that the Board acted contrary to law, fraudulently, arbitrarily, or capriciously. Therefore, the appeal fails.

The Shahins also make a charge of national origin discrimination, but that charge is not properly before this Court. "[W]hen this Court acts in its appellate capacity on an appeal from an administrative board, the Court will not consider issues not raised before the tribunal."²¹ The City of Dover Board of Assessment Appeals does not have jurisdiction to hear civil suits against the city. "Thus, this Court holds that the appellant could not have presented this claim to the Board and also cannot

²¹ *Tatten Partners, L.P. v. New Castle Cty. Bd. of Assessment Review*, 642 A.2d 1251, 1262 (Del. Super. 1993) aff'd sub nom. *New Castle Cty. v. Tatten Partners, L.P.*, 647 A.2d 382 (Del. 1994) (citing *Wilmington Trust Co. v. Conner*, 415 A.2d 773, 781 (Del. Super. 1980)).

appropriately join it with the instant appeal.”²² Because the Appellant’s claim of national origin is not properly before this Court, it will not be considered as part of this appeal.

CONCLUSION

It was the Appellant’s burden to show the property in question was subject to a substantial overvaluation, and for showing that the City of Dover Board of Assessment Appeals acted contrary to law, fraudulently, arbitrarily, or capriciously. That burden has not been met. For the foregoing reasons, the decision of the City of Dover Board of Assessment Appeals is **AFFIRMED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

²² *Id.*