

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ELLEN R. BAILEY)
)
 Appellant,)
)
 v.) **C.A. No. 04A-01-009 RRC**
)
)
 BOARD OF ASSESSMENT REVIEW)
 DEPARTMENT OF LAND USE)
)
 Appellee.)
)

Submitted: June 1, 2004
Decided: August 19, 2004

On Appeal from a Decision of the Board
of Assessment Review of New Castle County

AFFIRMED.

ORDER

Upon this 18th day of August, 2004 it appears to the Court that:

1. Appellant Ellen R. Bailey (“Bailey”) has filed a *pro se* appeal from a decision

of the Board of Assessment Review of New Castle County (“Board”). Bailey had filed a Residential Assessment Appeal with the Board to contest the property tax assessment on her condominium at 1306 Delaware Avenue, Unit 4, Wilmington, Delaware (“Property”). The Board denied Bailey’s appeal in that the Board split 2-2 on a motion to reduce the assessment and without a majority the motion failed under the rules of the Board.¹

2. Bailey purchased her condominium in January 2002 for the purchase price of \$82,000.² Her condominium is located in a Victorian home³ that was converted into condominiums in 1985.⁴ The condominium was sold in 1985 for \$115,900, after it had been initially converted into a condominium, and it was assessed in 1985 at \$93,100.⁵ To arrive at the assessment in 1985, New Castle County Department of Finance (“County”), through the Department of Land Use, used the purchase price from 1985 and discounted it to reflect a comparable price from 1983. The County has continued to use the 1983 base year, which was the year of

¹ *Bailey v. Board of Assessment Review Department of Land Use*, Record of Proceedings Appeal Docket No. 1148 at 25 (December 17, 2003) (hereinafter “Record at _”)

² Record at 27.

³ The Victorian home in which Bailey’s condominium is located is an historic home listed on the National Historic Register. Record at 6.

⁴ Record at 6.

⁵ Record at 8,12.

the last County-wide reassessment and is the year of assessment used to determine property taxes in New Castle County. Bailey's property tax is currently approximately \$2300 a year.

3. The issues raised by this appeal are whether: 1) the Board "acted contrary to law . . . [and] arbitrarily" in accepting the County's rebuttal evidence over Bailey's evidence and not lowering her property assessment; and 2) the Board "failed to do its duty of 'making more equitable' the assessment procedures and process " when the Board failed to apply 9 *Del. C.* § 8318 to real estate assessments within the same district.⁶

4. Before addressing the merits of the appeal this Court must examine the standard of review to be applied on appeal. A taxpayer aggrieved by the assessment of his property has the right to bring an appeal before the Board of Assessment Review and then to appeal the Board's decision to this Court.⁷ On appeal to this Court, "the decision of each board of assessment or department of

⁶ 9 *Del. C.* § 8319 states:

If any taxable shall make complaint to a board of assessment that the real estate in any election or representative district, as compared with other such districts, is not assessed in a fair and equitable manner, the board, or some member thereof, shall visit personally the district, and inspect personally the properties, the assessment of which is complained of, thereby to equalize and make perfect the assessments.

⁷ 9 *Del.C.*, § § 8311(a) and 8312(b) and (c).

finance shall be *prima facie* correct and the burden of proof shall be on the appellant to show that such body acted contrary to law, fraudulently, arbitrarily or capriciously."⁸ "There is . . . a presumption of accuracy which attaches to the County assessment record."⁹ The taxpayer who chooses this path faces "a substantial evidential burden at both the administrative and appellate levels."¹⁰ The owner's evidence must not only be competent; it must be sufficient to show a substantial overvaluation. If rebutted by such evidence, the presumption in favor of the accuracy of the assessment ceases to exist.¹¹ The Board may hear evidence to rebut the owner's evidence and support the assessment.¹² When rebutting the owner's evidence, "[t]he County is free to use different valuation methodologies and to present evidence and argument in support of its position that the taxpayer's valuation is unreliable or otherwise inaccurate. [Citation omitted]. The Board then will be able to use its expertise to evaluate the competing methodologies; make an

⁸ *Tatten Partners, L.P. v. New Castle County Board of Assessment Review*, 642 A.2d 1251 (quoting *Board of Assessment Review v. Stewart*, 378 A.2d 113, 116 (Del.Supr. 1977)).

⁹ *New Castle County et. al. v. Moore et. al.*, 1984 Del. Super. LEXIS 622 *5 (Del. Super.) (quoting *Fitzsimmons v. McCorkle*, 214 A.2d 334 (Del. Supr. 1965)).

¹⁰ *Tatten*, 642 A.2d at 1256 (quoting *Seaford Associates, L.P. v. Board of Assessment Review*, 539 A.2d 1045, 1047 (Del.Supr.1988)).

¹¹ *Fitzsimmons v. McCorkle*, 214 A.2d 334, 337 (Del. 1965).

¹² *Fitzsimmons*, 214 A.2d 337.

informed judgment as to which is more persuasive; and state the reasons for its decision.”¹³ The reviewing court should give due recognition to the Board’s expertise in the area of assessment appeals and opportunity to view and evaluate the witnesses.¹⁴

The reviewing court should not reverse the Board if it finds that the Board relied in part on incompetent evidence but reverse it only if "the Board's findings are clearly wrong and its conclusions not the product of an orderly and logical deductive process."¹⁵ This Court “will reverse the Board only where its decision is arbitrary, capricious or contrary to law, [and] if it clearly appears that the Board failed to apply established assessment standards mandated by decisional law.”¹⁶ The Board may not rely solely upon its assessment record, or personal knowledge of its members unsupported by evidence in the face of countervailing competent and substantial evidence.¹⁷

¹³ *New Castle County Department of Finance, et. al. v. Teachers Insurance and Annuity Assoc.*, 669 A.2d 100, 103 (Del. 1995).

¹⁴ *Western Gateway Associates, L.P. v. New Castle County Board of Assessment Review*, 1988 WL 912012 *1 (Del. Super.).

¹⁵ *Tatten*, 642 A.2d at 1256 (quoting *Rodney Square Investors, L.P. v. Board of Assessment Review*, No. 256, 1982, Horsey, J. (April 7, 1983) (ORDER) (citing *Levitt v. Bouvier*, 287 A.2d 671 (Del.Supr.1972)).

¹⁶ *New Castle County v. Moore*, 1984 Del. Super. LEXIS 622 *6.

¹⁷ *Fitzsimmons*, 214 A.2d 337.

5. Bailey claims that the Board “acted contrary to law . . . [and] arbitrarily” in not accepting her evidence and lowering her property assessment.¹⁸ Bailey argues that the assessment of her house is too high and she is paying “more than [her] fair share.”¹⁹ Bailey presented to the Board the sale price of five comparable condominiums located in historic buildings on Delaware Avenue where her condominium is located.²⁰ The condominiums were sold between 1983 and 1985 and the prices of the condominiums ranged from \$61,900 to \$81,900 and were lower than the sale price of her condominium when it sold in 1985.²¹ The assessments on the comparable condominiums ranged between \$55,800 and

¹⁸ Appellant’s Opening Brief at 3 (hereinafter “Op. Br. at _”). Appellee moved to strike portions of Appellant’s opening brief, specifically p. 3, lines 5-8, 12-29; p. 4; p. 5, lines 1-7, 22-27; p. 6, lines 1-3; p. 8, lines 8-10; and p. 9, lines 8-11. (Appellee’s Motion to Strike Portions of Appellant’s Opening Brief at 4 (hereinafter “Mot. To Strike at _”). This Court granted Appellee’s motion on the grounds that the arguments made in the stricken portions of Appellant’s Opening Brief had not been raised before the Board, further, Bailey did not attend the hearing on the Motion to Strike . Appellant requests this Court to consider two additional properties that were not presented to the Board. In its Wherefore clause to Appellee’s Motion to Strike, the County did not specifically request that the two additional comparable properties be stricken. The two additional examples are on p. 7, lines 16-31 of Appellant’s Opening Brief. This Court granted the Motion to Strike based specifically on the lines requested to be stricken on page four of the motion. This Court now holds that the two additional examples will not be considered by this Court on appeal; as conceded by Bailey, the two properties are residential homes and not condominiums and are therefore irrelevant to her argument.

¹⁹ Record at 12.

²⁰ Record at 25.

²¹ *Id.*

\$75,300, which is lower than the assessment on her condominium.²² Based on these figures, Bailey argues that her assessment should be lowered to at least \$72,000.²³

Bailey also argues that the Board has “failed to do its duty of ‘making more equitable’ the assessment procedures and process by failing to approve [her] appeal.”²⁴ Bailey relies on 9 *Del. C.* § 8318, which states in part that “if any taxable shall make complaint to a Board of Assessment Review that the real estate in any election or representative district, as compared with other such districts, is not assessed in a fair and equitable manner, the Board . . . shall visit and inspect . . . to equalize and make perfect the assessments.” Bailey argues that § 8318 “must apply to assessments within districts, as well as between them.”²⁵

6. The County argues in response to Bailey’s first contention that the market value and assessment of Bailey’s condominium is “entirely reasonable, given the market for condominiums in the [area] at the time of the reassessment.”²⁶ The County’s position was presented by Andrew J. Marinelli (“Marinelli”), Assessor

²² *Id.*

²³ *Id.*

²⁴ Op. Br. at 7.

²⁵ Op. Br. at 7.

²⁶ Record at 9.

Supervisor. Marinelli testified that Bailey's comparably priced condominiums are not the most accurate indicator of price because there are "more comparable properties . . . in the same building [as her condominium]." ²⁷ Marinelli further testified against the use of Bailey's comparable properties because those properties are of varying square footage, which is different from the square footage of Bailey's condominium. ²⁸

Marinelli asserted to the Board that the condominiums presented by Bailey sold anywhere from \$80 to \$105 per square foot between 1983 and 1985; however, her condominium sold for over \$150 per square foot in 1985. ²⁹ Marinelli further asserts that other properties in the same building as Bailey's condominium had sold at over \$125 per square foot. ³⁰ Marinelli testified that the building in which Bailey's condominium is located was "more attractive to buyers [in the 1983-1985 period] than other buildings in the area." ³¹ Part of the reason for a disparity in assessments, according to Marinelli, was that "[w]hile other residential property has appreciated for 20 years, condominiums 'went South'

²⁷ *Id.* at 11.

²⁸ *Id.* at 10.

²⁹ Record at 10.

³⁰ *Id.* at 11.

³¹ *Id.*

in the late '80's [and] they're only now just recovering to the level they were selling at in the early '80's."³² Marinelli testified that the price the condominium was sold for in 1985 was "the market value of the property at that time: willing buyers were paying willing sellers that price, and [the County was] charged with finding the 1983 market value of the property."³³

The County argues in response to Bailey's second argument that § 8318 does not apply to the instant case and that alleged inequities in assessments are potentially remedied under 9 *Del. C.* § 1318. The County asserts that § 8318 only applies to "real estate in any election or representative district [that] is not assessed in a fair and equitable manner."³⁴ The County argues that "the statutory procedure for restoring equity and effectiveness in the assessment procedure is for the Board to notify the general manager of the Department of Land Use and file copies of such notice with the Clerk of the County Council."³⁵ The County asserts that the Chairman of the Board of Assessment Review sent a letter to the General Manager of the Department of Land Use, which "express[ed] the Board's concern in the

³² Record at 9. Marinelli acknowledged that "there's something of an inequity with condominiums, especially in the City of Wilmington."

³³ *Id.*

³⁴ Appellee's Answering Brief at 13 (hereinafter "Answer Br. at _").

³⁵ Answer Br. at 13.

disparity between current market values and the 1983 base year values used for County assessments and the perceived inequity that causes to property owners.”³⁶

7. The Supreme Court has explained that “the [New Castle] County Department of Finance is charged with the responsibility of assessing all property for taxation.”³⁷ Under Delaware law “real estate tax assessments must be based on the property’s true value in money, which is the same as its fair market value.”³⁸ The Delaware Supreme Court has defined “fair market value . . . [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’.”³⁹ The Delaware Constitution mandates uniformity in taxes; uniformity “is achieved when all taxpayers of the same general class and within the territorial limits of the authority are treated the same.”⁴⁰ This Court has held that “[t]he requirement that uniformity in real estate taxation be based on a uniform system of

³⁶ *Id.*

³⁷ *Board of Assessment for New Castle County v. Stewart*, 378 A.2d 113, 116 (Del. 1977).

³⁸ *Teachers Insur.*, 669 A.2d at 102.

³⁹ *Teachers Insur.*, 669 A.2d at 102.

⁴⁰ *Seaford Associates, L.P. v. Boards of Assessment Review for Sussex County*, 539 A.2d 1045, 1049 (Del. 1988).

assessment is firmly established.”⁴¹ The Delaware Supreme Court has held that “[t]axation is not an exact science and, therefore, the uniformity clause does not require that all taxes be assessed with computer precision against all taxpayers equally. [Citation omitted]. Article VIII, § 1 simply requires that all taxpayers of the same class residing within the same tax district be treated equally.”⁴²

The “base year” formula and the use of “market value” assessment are valid and accepted methods of determining uniform taxation in Delaware. The Supreme Court in *Board of Assessment for New Castle County v. Stewart* held that the “County may use the ‘base year’ formula as a method of implementing the constitutional mandate of tax uniformity.”⁴³ This Court has held that “uniformity is achieved through the application of base year [presently 1983] valuation, even when subsequent years reflect a smaller value. [Citation omitted]. Inequities arising from deterioration are generally addressed through periodic general

⁴¹ *Moore*, 1984 Del. Super. LEXIS 622 *4.

⁴² *Stewart*, 378 A.2d at 115.

⁴³ *Stewart*, 378 A.2d at 116 (holding that “the County Department of Finance is charged with the responsibility of assessing all property for taxation and, in the interest of uniformity, it has selected the base year method of assessment. Under this method, all County property is assessed in terms of 1970 values, regardless of when the assessment is made; assessments made after 1970 are “factored back” to that year using formulae and techniques.” The current “base year” in New Castle County is 1983.

reassessment.”⁴⁴ The *Stewart* court, however, held that “present Delaware law does not now require that there be periodic general reassessments.”⁴⁵ The Delaware Supreme Court in *Fitzsimmons v. McCorkle* held that “the comparability or market method is generally accepted as a preferred test for valuation.”⁴⁶ The “market approach” or “market value” uses recent sales of similar properties and compares them to the subject property; “[m]arket oriented adjustments are made for any differences between the comparable sales and the subject.”⁴⁷

The Board did not act contrary to law or arbitrarily in denying Bailey’s appeal. The Board considered Bailey’s evidence and even complimented her on the presentation. The evidence presented by Bailey was competent and may have been sufficient to support a Board decision in her favor absent rebuttal evidence from the County. In fact, two of the Board members apparently agreed with Bailey as they voted to lower her assessment. By presenting competent evidence, Bailey required the Board to not rely solely upon the assessment record but rather to hear rebuttal evidence from the County.

⁴⁴ *Moore*, 1984 Del. Super. LEXIS 622 *4.

⁴⁵ *Stewart*, 378 A.2d at 116.

⁴⁶ *Seaford Associates*, 539 A.2d at 1048.

⁴⁷ *Id.* at 1047.

The Board considered the evidence presented by Bailey; however, two members of the Board found that the County had presented substantial evidence to support the County's position. Marinelli, testifying for the County, explained to the Board why Bailey's evidence of comparable properties was not the most accurate way to judge the assessment of her property. While Bailey's examples were comparable to her own property there were "more comparable" properties in her own building. Two members of the Board agreed with the County that Bailey's assessment should not be lowered. The Board followed the applicable statutory regulations and applied "established assessment standards mandated by decisional law."

The Board explained its decision even though there was, in essence, no decision on the merits. The vote of the Board was a 2-2 split. Because there was no majority in favor of the motion to lower the assessment, the motion was not carried and the appeal denied. This result is consistent with the Rules of Procedure of the Board of Assessment Review of New Castle County. The Board consists of six members and a Chairperson⁴⁸ and a quorum of the Board is necessary to transact business at a hearing.⁴⁹ A quorum consists of four members

⁴⁸ Rules of Procedure of the Board of Assessment Review of New Castle County Art.1, § 1.

⁴⁹ *Id.* at Art. 4, § 2.

appointed to the Board, with the Chairperson considered a member for determining a quorum.⁵⁰ A vote of a majority of the members present at the hearing is required to carry a motion.⁵¹ The Board adhered to its own rules of governance in convening the hearing and voting on the motion to lower Bailey's assessment.

The main crux of Bailey's argument is not that the methodology of the assessment was applied wrong but rather that the methodology itself is wrong. She argues that using a base year of 1983 to establish a tax burden in 2004 is unfair and inequitable. The Board has had similar concerns and it made those concerns known in the manner prescribed by law to the General Manager of Land Use of New Castle County.⁵² *9 Del. C. § 1318* and *Tatten* stand for the proposition that the function of the Board is to determine if the assessment is correct based on accepted methods of assessing properties. If the Board finds there is a problem with the methodology, then its recourse is to notify the County Department of Land Use, which it has done.

⁵⁰ *Id.* at Art. 4, § 2.

⁵¹ *Id.* at Art. 4, § 3.

⁵² Answering Br. at Ex. F.

7. For the foregoing reasons, the decision of the Board of Assessment Review Department of Land Use is **AFFIRMED**.

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary

cc: Ellen R. Bailey

Dennis J. Siebold, Esquire, Finance Legal Officer

Erika Sokoloff, Esquire, Assistant New Castle County Attorney

Board of Assessment Review of New Castle County