

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NEW CASTLE COUNTY, a political )  
subdivision of the State of Delaware, ) No. 267, 2008  
)  
Petitioner Below, ) Court Below: Superior Court  
Appellant, ) of the State of Delaware in  
) and for New Castle County  
v. )  
) C.A. No. 07A-03-005  
NEW CASTLE COUNTY BOARD )  
OF ASSESSMENT REVIEW and )  
VERIZON DELAWARE, INC., a )  
Delaware corporation, )  
)  
Respondent Below, )  
Appellee. )

Submitted: January 14, 2009

Decided: March 26, 2009

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS** and **RIDGELY**, Justices, constituting the court en banc.

***ORDER***

This 26<sup>th</sup> day of March 2009, it appears to the Court that:

1. New Castle County appeals from a Superior Court order denying its petition for *certiorari* from the New Castle County Board of Assessment Review. The Superior Court judge denied *certiorari* because facts, not errors of law apparent on the face of the record drove the Board's decision.<sup>1</sup> "A writ of

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<sup>1</sup> *Maddrey v. Justice of Peace Court 13*, 956 A.2d 1204, 1213 (Del. 2008) ("Review on a writ of *certiorari* issued by the Superior Court differs fundamentally from appellate review

*certiorari* is *not* a substitute for, or the functional equivalent of, an appeal.”<sup>2</sup> Review on *certiorari* is limited to the face of the record.<sup>3</sup> On *certiorari*, the Superior Court can only review on the face of the record whether the Board committed legal error, exceeded its jurisdiction, or proceeded irregularly.<sup>4</sup> The County argued that the Board exceeded its jurisdiction and committed legal error. A Superior Court judge determined that, on the face of the record, the Board did not exceed its authority or commit legal error. Because the Superior Court judge properly denied *certiorari*, we **AFFIRM**.

2. The County appraised Verizon’s Delaware property at \$190,179,300 for the 2006-2007 tax year. Verizon appealed to the Board, pursuant to 9 *Del. C.* § 8311, claiming that the County’s appraisal method did not account fairly or accurately for the depreciation or obsolescence of Verizon’s outdoor equipment. On a taxpayer’s appeal from a County administrative decision on assessment of real property, the Board must determine whether the County’s assessment is correct “in light of the facts produced at [the] hearing.”<sup>5</sup> The Board must presume

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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>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *395 Assocs., LLP v. New Castle County*, 2006 WL 2021623, at \*3 (Del. Super.).

<sup>5</sup> 9 *Del. C.* § 1318(2).

that the County conducted an accurate assessment unless the taxpayer provides evidence of substantial overvaluation.<sup>6</sup> If, however, a taxpayer, like Verizon, presents competent evidence of substantial overvaluation, the Board must not ignore that evidence.<sup>7</sup>

3. At the Board hearing, the County's witness testified that it applied a one time depreciation rate of 5% to Verizon's property and then used the Consumer Price Index (CPPI) to factor that value back to 1983. The County's witness testified that it uses the one time 5% depreciation for all utility plants in New Castle County. Verizon argued for annual depreciation instead of the one time 5% depreciation, and also for application of the AUS Telephone Plant Index<sup>8</sup> rather than the CPI. The County defended its one time depreciation methodology by contending that annual depreciation for Verizon would constitute preferential treatment among all taxpayers. The Board decided that using the annual depreciation and AUS index assessed Verizon's tax basis more accurately. The Board, therefore, adjusted the Verizon property assessment to \$110,803,300.

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<sup>6</sup> *Fitzsimmons v. McCorkle*, 214 A.2d 334, 337 (Del. 1965); see *New Castle County Dept. of Fin. v. Teachers Ins. and Annuity Ass'n*, 669 A.2d 100, 103 (Del. 1995).

<sup>7</sup> *Tatten Partners, L.P. v. New Castle County Bd. of Assessment Review*, 642 A.2d 1251, 1262 (Del. Super. 1993).

<sup>8</sup> AUS Consultants provides cost and depreciation indices for the telecommunications and utilities industries.

4. The County filed a petition for *certiorari* to the Superior Court for review.<sup>9</sup>

5. On a petition for *certiorari* to the Superior Court,<sup>10</sup> the County was required to establish that the Board's judgment was final and that there was no other available basis for review.<sup>11</sup> The County established that the Board's judgment was final.<sup>12</sup> The County also established that there was no other basis for review because the County is not a taxpayer with a direct right of appeal.<sup>13</sup> Therefore, the Superior Court judge properly concluded that Superior Court had jurisdiction to entertain the County's *certiorari* petition.

6. The Superior Court judge then considered the merits of the petition to determine if he could resolve the parties' dispute based on what appears on the face of the record. The County contended that the record showed that the Board

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<sup>9</sup> The County included both the Board and Verizon as appellees to the Superior Court appeal.

<sup>10</sup> The Superior Court has jurisdiction over *certiorari* proceedings. Del. Const. Art. IV, § 7; *Maddrey v. Justice of Peace Court 13*, 956 A.2d 1204, 1212 (Del. 2008). Tax boards conduct quasi judicial proceedings when making tax assessments, which are subject to *certiorari* review. *Del. Barrel & Drum Co. v. Mayor of Wilmington*, 175 A.2d 403, 404 (Del. Super. 1961).

<sup>11</sup> *Reise v. Bd. of Bldg. Appeals of Newark*, 746 A.2d 271, 273 (Del. 2000).

<sup>12</sup> The Board's decision became final on April 6, 2007, which was 30 days after it was issued.

<sup>13</sup> *New Castle County v. Chrysler Corp.*, 681 A.2d 1077, 1081, 1089 n. 9 (Del. Super. 1995) (analyzing 9 Del. C. § 8312(c) to conclude that the General Assembly did not intend to give the County the right to appeal a Board decision, but that a *certiorari* petition might be viable in certain circumstances).

exceeded its authority and that the dispute over which depreciation methodology to apply was a legal, not a factual question. In response, the Board made several points of which the Superior Court judge found the following to be relevant:

2. The values presented by Verizon were factored back to the base year of 1983 to ensure uniformity;

4. New Castle County's use of a one-time 5% depreciation reduction was not logical because that methodology does not take into account wear and tear and obsolescence of equipment; and

5. The inequities that arise from deterioration (depreciation) are normally addressed through periodic general assessments, but since no reassessment has been done since 1983, the Board is otherwise unable to correct the inequities.<sup>14</sup>

7. The Superior Court judge acknowledged that a property's "true" value in money, or fair market value, which is a statutory requirement for tax assessment,<sup>15</sup> can be determined by three different appraisal methods.<sup>16</sup> He noted each appraisal method's strengths and weaknesses and that the law did not expressly provide which method must be used.<sup>17</sup> The judge further noted that a

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<sup>14</sup> *New Castle County v. New Castle County Bd. of Assessment*, Del. Super., C.A. No. 07A-03-005, at \*4-5 (April 30, 2008) (*County v. Bd.*) (citing Decision of the Bd. of Assessment Review of NCC (March 6, 2007) at \*2).

<sup>15</sup> 9 Del. C. § 8306(a).

<sup>16</sup> *County v. Bd.*, Del. Super., C.A. No. 07A-03-005, at \*9 (citing *Seaford Assocs., L.P. v. Bd. of Assessment Review*, 539 A.2d 1045, 1049 (Del. 1988); *Del. Racing Ass'n v. McMahon*, 340 A.2d 837, 842 (Del. 1995)).

<sup>17</sup> *Id.* at \*9-10.

statute governing mobile homes explicitly requires reassessment every five years.<sup>18</sup> The Superior Court judge found that, unlike the statutorily mandated periodic reassessment for mobile homes, “the County’s 5 percent deduction for depreciation is the Board’s habit, not a legislative mandate.”<sup>19</sup> Lastly, the County conceded that the Board is required to determine whether the assessment is correct in light of the facts produced at a hearing.<sup>20</sup> Therefore, the Superior Court judge properly found that the Board, in the absence of a statutory mandate, did not exceed its jurisdiction when it considered depreciation methodologies other than the 5% annual depreciation model the County asserted to be correct.

8. On this appeal, the County relies on *Bailey*<sup>21</sup> to support its position that the Board should not have reassessed the property itself because the Board’s authority is limited to notifying the County if the Board believes the County’s methodology to be incorrect. Verizon cites *New Castle County v. Moore* as support for its view that the Board may reassess property if it finds the County’s method to be incorrect, as long as the Board follows the base year (1983) valuation

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<sup>18</sup> See 9 Del. C. § 8351.

<sup>19</sup> *County v. Bd.*, Del. Super., C.A. No. 07A-03-005, at \*11.

<sup>20</sup> See 9 Del. C. § 1318(2).

<sup>21</sup> *Bailey v. Bd. of Assessment Review*, 2004 WL 1965867 (Del. Super.).

standard and articulates the rationale for its application in its decision.<sup>22</sup> The applicable statute commands: “[i]f the Board should find that the assessment is greater than it should be, the Board shall order the Chief Financial Officer to reduce the assessment and he or she shall thereupon reduce the assessment to the adjusted amount established by the Board.”<sup>23</sup> The statute clearly authorizes the Board to order the CFO to reduce the assessment. Moreover, the Board had the unquestionable authority to go beyond simply notifying the County that the Board believes the County’s methodology to be flawed. Indeed, the statute mandates that the Board do more.

9. Issues of uniformity and discrimination are intertwined. The Superior Court judge cited case law to support his conclusion that when the property value is discounted back to the 1983 value base year, uniformity results.<sup>24</sup> The Superior Court judge found that nothing on the face of the record indicated that depreciation rates address uniformity. Thus, he correctly found that the Board did not err as a matter of law by factoring the property value back to 1983 and then using a fairer, more accurate, depreciation rate. The Superior Court judge also declined to review

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<sup>22</sup> *New Castle County v. Moore*, 1984 Del. Super. LEXIS 622, at \*5.

<sup>23</sup> 9 *Del. C.* § 1318.

<sup>24</sup> *New Castle County v. New Castle County Bd. of Assessment*, Del. Super., C.A. No. 07A-03-005, at \*7-8 (April 30, 2008) (citing *Bd. of Assessment Review for New Castle County v. Stewart*, 378 A.2d 113, 116 (Del. 1977); *New Castle County v. Moore*, 1984 Del. Super. LEXIS 622).

the County's argument that the Board's decision *deliberately* discriminated in favor of Verizon, because that argument could not be resolved on the face of the record.<sup>25</sup> The Superior Court judge determined that, on the face of the record, the Board did not violate any constitutional requirement for uniformity by *deliberately* discriminating between taxpayers.<sup>26</sup> Because nothing appeared on the face of the record to conclude otherwise, the County's deliberate discrimination argument could not be considered on *certiorari*.<sup>27</sup> Therefore, we agree with the Superior Court judge's finding that the record before him did not support a conclusion that the Board erred as a matter of law.

10. The Superior Court judge found that “[t]he Board did not act beyond its authority in accepting expert evidence of depreciation, and, in fact, the Board may not ignore competent evidence of over-valuation.”<sup>28</sup> The Superior Court judge concluded that the “face of the record indicates that depreciation is a factual

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<sup>25</sup> See *Maddrey v. Justice of Peace Court 13*, 956 A.2d 1204, 1213 (Del. 2008)(“ the Superior Court's scope of review on common law writs of *certiorari* issued to any inferior tribunal in any type of case, is limited to errors on the face of the record”).

<sup>26</sup> *County v. Bd.*, Del. Super., C.A. No. 07A-03-005, at \*12 (citing *Stewart*, 378 A.2d at 115-16).

<sup>27</sup> *Maddrey*, 956 A.2d at 1213.

<sup>28</sup> *County v. Bd.*, Del. Super., C.A. No. 07A-03-005, at \*10 (citing *Tatten Partners, L.P. v. New Castle County Bd. of Assessment Review*, 642 A.2d 1251, 1262 (Del. Super. 1993)).



matter[, which] cannot be addressed by the Court on *certiorari*.”<sup>29</sup> We agree that the Board did not exceed its authority and that there is no evidence on the face of the record to find otherwise. Once the Superior Court and we conclude that the Board has the power to order a reassessment, the particular depreciation methodology it selects to reassess the property’s value is necessarily a factual determination based on the evidence presented at the Board hearing. The Board’s selection of a particular depreciation method being a factual question, the Superior Court judge correctly declined to address that argument on *certiorari* review.<sup>30</sup>

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>29</sup> *Id.*

<sup>30</sup> To the extent the Superior Court judge addressed legal questions relating to uniformity, its discussion was dicta.