IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Vianello,	:	
	:	
Appellant	:	
	:	
v.	:	No. 51 C.D. 2007
	:	
Monroe County Board of Assessment Appeals	:	Submitted: September 28, 2007
	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: February 20, 2008**

Michael Vianello (Vianello) appeals, pro se, from an order of the Court of Common Pleas of Monroe County (trial court) denying his appeals from the decisions of the Monroe County Board of Assessment Appeals (Board of Assessment Appeals), which upheld the 2006 real property tax assessments for three parcels of land that he owns in Chestnuthill Township. On appeal, we are essentially asked to determine whether Vianello's parcels, which are enrolled for preferential tax treatment under the Pennsylvania Farmland and Forest Land Assessment Act of 1974, commonly known

as the Clean and Green Act (Clean and Green Act),[1] were properly assessed in light of the amendments brought about by Act 235[2] with regard to farmstead land.

Prior to discussing the facts of this case, we will begin by briefly reviewing the Clean and Green Act and the changes that were made by Act 235. The Clean and Green Act provides for preferential real estate tax assessments for land that complies in its acreage and usage with certain statutory requirements. In order to be enrolled to receive preferential tax treatment under the Clean and Green Act, the land must qualify for classification in any of the following three categories: (1) agricultural use; (2) agricultural reserve; or (3) forest reserve. Section 2 of the Clean and Green Act, 72 P.S. § 5490.2. Previously, the Clean and Green Act allowed farmstead land that is located within an area falling into any one of the three categories set forth above to receive preferential tax treatment as well. However, in 2004, the General Assembly passed Act 235, which amended the Clean and Green Act by adding subsections (f) and (g) to Section 3[3] and by modifying subsections (a) and (b) and adding subsection

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[1] Act of December 19, 1974, P.L. 973, as amended, 72 P.S. §§ 5490.1 – 5490.13.

[2] Act of December 8, 2004, P.L. 1785.

[3] The amended version of Section 3 provides, in relevant part, as follows:

> (f) A tract of land enrolled in either the agricultural use or forest reserve land use category and otherwise eligible for preferential assessment under this section shall not be deemed ineligible because the owner of the tract of land permits or authorizes or has permitted or authorized a recreational activity on the tract pursuant to section 8(f).
>
> (g) (1) The county commissioners may adopt an ordinance to include farmstead land in total use value for land in agricultural reserve. Any ordinance adopted pursuant to this subsection shall be applied uniformly to all land in agricultural reserve in the county.

(Continued…)

(d) to Section 4.2.[4] These changes to the Clean and Green Act gave county

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(2) The county commissioners may adopt an ordinance to include farmstead land in the total use value for land in forest reserve. Any ordinance adopted pursuant to this subsection shall be applied uniformly to all land in forest reserve in the county.

72 P.S. § 5490.3(f)-(g).

[4] The amended version of Section 4.2 provides, in relevant part, as follows:

(a) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use, *including farmstead land*, *and for land in agricultural reserve* by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS [United States Department of Agriculture-Natural Conservation Service] Agricultural Land Capability Classification system and other information available from USDA-ERS [Economic Research Service], The Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings shall be used.

(b) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve by considering available evidence of capability of the land for its particular use. Contributory value of farm buildings shall be used.

. . . .

(d) For purposes of this section:

(1) *Farmstead land located within an area enrolled as agricultural use shall be assessed at agricultural use value.*

(2) *Farmstead land located within an area enrolled as agricultural reserve or forest reserve shall be assessed at agricultural use value if either:*

(i) *a majority of land in the application for preferential assessment is enrolled as agricultural use land; or*

(ii) *in the circumstance that noncontiguous tracts of land are enrolled under one application, a majority of land on the tract where the farmstead land is located is enrolled as agricultural use land.*

(Continued…)

commissioners the authority to adopt ordinances to include farmstead land in the total use value for land in agricultural reserve and forest reserve, 72 P.S. § 5490.3(f)-(g), and farmstead land located in an area enrolled as agricultural reserve or forest reserve is no longer eligible for preferential tax treatment unless a majority of the land comprising the application for preferential tax treatment is enrolled in the agricultural use category. 72 P.S. § 5490.4b.

With that statutory background in mind, we will now turn to the facts of the present case. Vianello owns three contiguous parcels in Chestnuthill Township, Monroe County. Vianello had enrolled each of his parcels to receive preferential tax treatment under the Clean and Green Act. The first parcel (Lot 1) is 46.43 acres and contains farmstead land. The second parcel (Lot 2) is 86.79 acres and does not contain any farmstead land. The third parcel (Lot 3) is 63 acres and contains farmstead land.

For the 2005 tax year, the Monroe County Assessment Office (Assessment Office) had assessed Vianello's parcels as follows: Lot 1 - $8,590; Lot 2 - $870; and Lot 3 - $9,430. At that time, Lot 1 consisted of land classified as agricultural use, agricultural reserve, and forest reserve; Lot 2 consisted entirely of land classified as forest reserve; and Lot 3 consisted of land classified as agricultural use, agricultural reserve, and forest reserve.

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72 P.S. § 5490.4b (emphasis added).

On July 6, 2005, the Monroe County Commissioner's Office (Commissioner's Office), acting pursuant to Act 235, adopted Ordinance No. 4, which provides, in relevant part, as follows:

> **SECTION 1** – Effective tax year 2006, in agricultural reserve category, all farmstead base acre land enrolled in Act 319 shall have the market value applied.
>
> **SECTION 2** – Effective tax year 2006, [sic] forest reserve category, all farmstead base acre land enrolled in Act 319 shall have the market value applied.
>
> **SECTION 3** – Effective tax year 2006, the chief assessor shall uniformly establish a total use value for land in agricultural use, including farmstead land and land in agricultural reserve and forest reserve by applying a rate not to exceed the rate determined by the Pennsylvania Department of Agriculture.
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> **SECTION 4** – This ordinance shall take effect the [sic] five days after the adoption thereof.

(Monroe County Ordinance No. 4, July 6, 2005, Board of Assessment Appeals' Exhibit No. 7.) Following the adoption of Ordinance No. 4, the Assessment Office reevaluated the uses of the land that comprised Vianello's parcels. As a result, Vianello's parcels were reclassified as follows: Lot 1 was reclassified as agricultural reserve and forest reserve; Lot 2 remained classified entirely as forest reserve; and Lot 3 was reclassified as agricultural reserve and forest reserve. Due to the changes brought about by Act 235 and Ordinance No. 4, as well as the reclassification of the land comprising Vianello's parcels, the Assessment Office reassessed Vianello's parcels for the 2006 tax year as follows: Lot 1 - $12,520; Lot

2 - $1,500; and Lot 3 - $13,190. Believing that these new assessments were too high, Vianello appealed to the Board of Assessment Appeals.

After reviewing the assessments in an open meeting, the Board of Assessment Appeals issued separate decisions upholding the assessments of each of Vianello's parcels. Vianello subsequently appealed the decisions of the Board of Assessment Appeals to the trial court.

The trial court conducted a *de novo* hearing during which the Board of Assessment Appeals introduced into evidence its assessment records for Vianello's parcels. Vianello then testified as to the poor condition of the buildings on his parcels and the anticipated yield of the crops and vegetation that he planted on his parcels. (Trial Court Hr'g Tr. at 6-12.) In support of his testimony, Vianello submitted several photographs into evidence, which depict the poor exterior appearance of the buildings on his properties. (Vianello's Exhibit Nos. 1-5.) Vianello also submitted a document from Penn State University, which listed the average yields for certain crops. (Vianello's Exhibit No. 6.) Vianello did not present any expert testimony to rebut the fair market value of his parcels as established in the assessment records that were introduced into evidence by the Board of Assessment Appeals. The Board of Assessment Appeals did not present any further evidence with regard to the fair market value of Vianello's parcels, asserting that Vianello had failed to present sufficient evidence to overcome the fair market value of his parcels as established in the assessment records. (Trial Court Hr'g Tr. at 14.) However, the Board of Assessment Appeals did present the testimony of Tom Hill, the chief assessor of Monroe County, who testified that the valuation of Vianello's parcels had changed

because Ordinance No. 4 allowed the Assessment Office "to revalue the farmstead acreage . . . for those properties in agricultural reserve and forest reserve." (Trial Court Hr'g Tr. at 18.) Mr. Hill also testified that some of Vianello's parcels had been reclassified from agricultural use to agricultural reserve following an inspection of such parcels and Vianello's failure to submit requested documentation.[5] (Trial Court Hr'g Tr. at 18-21.)

Following the hearing, the trial court issued an opinion and order, dated November 30, 2006, denying Vianello's appeals. In its opinion, the trial court found that the Board of Assessment Appeals had established a prima facie case for the validity of the assessments by introducing into evidence its assessment records. The trial court further found that Vianello had failed to present competent and relevant evidence to overcome the validity of the assessments. Additionally, the trial court concluded that: (1) the fair market value of Lot 1 is $50,079; (2) the fair market value of Lot 2 is $4,079; (3) the fair market value of Lot 3 is $52,776; and (4) the predetermined ratio of 25% is the appropriate ratio to apply in determining the assessed values of the parcels. Vianello now appeals to this Court.[6]

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[5] The Assessment Office had requested receipts and a Schedule F "Profit or Loss from Farming" IRS form to verify that Vianello was using the property as a working farm. (Trial Court Hr'g Tr. at 19.)

[6] "Our scope of review in a tax assessment appeal is limited to determining whether the trial court abused its discretion or committed an error of law, and whether the trial court's findings are supported by substantial evidence." Finter v. Wayne County Board of Assessment Appeals, 889 A.2d 678, 681 n.6 (Pa. Cmwlth. 2005). A statute creating a preferential tax treatment must be strictly construed against the taxpayer. Moyer v. Berks County Board of Assessment Appeals, 803 A.2d 833, 841 n. 13 (Pa. Cmwlth. 2002).

On appeal, Vianello presents several arguments as to why the trial court erred in its determination.[7] First, Vianello argues that the trial court erred in its determination of the fair market values of his parcels because the buildings thereon are without any value due to their unsightly and run down condition. Vianello also argues that Act 235 should not be retroactively applied to farmstead acreage located on parcels, such as his, which had previously been enrolled to receive preferential tax treatment under the Clean and Green Act, but rather should only be applied to land for which preferential tax treatment is being sought for the first time. Alternatively, Vianello contends that, even if Act 235 is applicable to his parcels, he presented sufficient evidence to establish that the farmstead acreage on his parcels qualifies for agricultural use classification, thus entitling it to preferential tax treatment under the amended version of the Clean and Green Act. Furthermore, Vianello contends that the use value for forest reserve land was unreasonably and arbitrarily raised from $40 per acre to $69 per acre for the 2006 tax year. Finally, Vianello argues that he did not receive proper notice of the change in his tax assessments. We will address each of these arguments separately below.

Vianello first argues that the fair market values of Lot 1 and Lot 3, as determined by the trial court, are incorrect because the buildings thereon are without any value due to their unsightly and run down condition.[8] Vianello contends that the

[7] In his Statement of Questions Involved, Vianello raises 15 issues. We have consolidated those issues into the five issues discussed in the text of this opinion.

[8] Interestingly, it appears from the record that the values of the buildings on Lot 1 and Lot 3 did not increase for the 2006 tax year. Although Vianello is contending that such values have been too high for many years, he is only now disputing the assessments of the buildings. (Trial Court Hr'g Tr. at 5.)

assessment records that were entered into evidence by the Board of Assessment Appeals were insufficient to establish that the assessments were correct because he presented testimony and evidence proving otherwise, thus shifting the burden of proof back to the Board of Assessment Appeals. Vianello further contends that he was not required to present expert testimony to establish the fair market value of his parcels. We disagree.

"It is well settled that the admission into evidence of the assessment records establishes a prima facie case for establishing the validity of the assessed value of a property." Craftmaster Manufacturing, Inc. v. Bradford County Board of Assessment Appeals, 903 A.2d 620, 625 (Pa. Cmwlth. 2006) (citing Deitch Co. v. Board of Property Assessment, 417 Pa. 213, 221-22, 209 A.2d 397, 402 (1965)). Once a prima facie case has been established, the burden shifts to the taxpayer to "come[] forward with *competent, credible and relevant* evidence to rebut the validity of the assessment." Id. (emphasis in original).

In the present case, during the *de novo* hearing before the trial court, the Board of Assessment Appeals entered into evidence its assessment records for Vianello's parcels and, thus, established a prima facie case for the validity of the assessments. As a result, the burden shifted to Vianello to rebut the validity of the assessments by presenting competent, credible, and relevant evidence. As found by the trial court, Vianello failed to meet his burden. Vianello testified that the buildings on his parcels "are very unsightly and in need of repair." (Trial Court Hr'g Tr. at 4.) Vianello further testified that "just on the basis of the way [they look] . . . [he didn't] think

anybody is going to place any value on [the buildings]."[9] (Trial Court Hr'g Tr. at 7-8.) However, Vianello did not present any evidence as to the value of comparable buildings, nor did he provide any estimates of value based on something other than his own subjective beliefs. Vianello also did not present any expert testimony to rebut the values set forth in the assessment records. Contrary to Vianello's argument, a taxpayer's testimony as to zero valuation is not competent to establish the fair market value of property. County of Monroe v. Bolus, 613 A.2d 178, 182 (Pa. Cmwlth. 1992). Because Vianello failed to present competent, credible, and relevant evidence, the assessment records entered into evidence by the Board of Assessment Appeals were sufficient to establish the validity of the assessments. See Quad Associates v. Blair County Board of Assessment Appeals, 566 A.2d 1274, 1278 (Pa. Cmwlth. 1989) ("[A] taxing authority may prevail before a trial court on an appeal from an assessment by simply presenting its assessment records.") Therefore, based on our review of the record, we are unable to conclude that the trial court erred in valuing the buildings on Vianello's parcels.

Vianello next argues that Act 235 should not be retroactively applied to farmstead acreage located on parcels, such as his, which had previously been enrolled to receive preferential tax treatment under the Clean and Green Act, but rather should only be applied to land for which preferential tax treatment is being sought for the first time. However, in a recent case in which the taxpayer raised the same argument, we held that Act 235 can be retroactively applied. Sher v. Berks County Board of

[9] Interestingly, during the *de novo* hearing before the trial court, Vianello also testified that he uses the buildings on Lot 1 and Lot 3 as his residence. (Trial Court Hr'g Tr. at 14.) Thus, although Vianello claims that the buildings do not have any value, he considers them suitable to inhabit.

Assessment, ___ A.2d ___ (No. 1852 C.D. 2006, Pa. Cmwlth., filed January 11, 2008). This Court's analysis in Sher explains the basis for permissible retroactive application as follows:

> A statute shall be construed prospectively unless the legislature clearly intended otherwise. Section 1926 of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1926. A retroactive law is "one which relates back to and gives a previous transaction a legal effect different from that which it had under the law in effect when it transpired." R & P Servs., Inc. v. Department of Revenue, 541 A.2d 432, 434 (Pa. Cmwlth. 1988). However, "[w]here no vested right or contractual obligation is involved, an act or regulation is not impermissibly construed retroactively when applied to a condition existing on its effective date, even though the condition results from events which occurred prior to that date." Id. A right is not vested unless it is fixed and without condition. Ashbourne School v. Department of Education, 403 A.2d 161 (Pa. Cmwlth. 1979).
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> The legislature has wide discretion in matters of taxation. Devlin v. City of Philadelphia, 580 Pa. 564, 862 A.2d 1234 (2004). The taxing authority's discretion is limited only by requirements of the Equal Protection and Uniformity Clauses of the United States and Pennsylvania Constitutions. Free Speech, LLC v. City of Philadelphia, 884 A.2d 966 (Pa. Cmwlth. 2005). As for due process standards applicable to statutes with retroactive effect, the court stated in United States v. Carlton, 512 U.S. 26, 30-31 (1994): "'Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches. . . . [T]he retroactive application of the legislation is itself justified by a rational legislative purpose.'" (Quoting Pension Benefit Guar. Corp. v. R. A. Gray & Co., 467 U.S. 717, 729-730 (1984)). In upholding retroactive application of a statutory amendment adopted to correct a mistake in the original provision that would have created a significant and unanticipated revenue loss, the Carlton Court explained:

> [The taxpayer's reliance alone is insufficient. . . . Tax legislation is not a promise, and a taxpayer has no vested right in the [tax statute]. . . . "Taxation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract. It is but a way of apportioning the cost of government . . . ."

Id., 512 U.S. at 33 (quoting Welch v. Henry, 305, U.S. 134, 146 (1938)).

The case in Fidelity Bank, N.A. v. Commonwealth ex rel. Department of Revenue, 645 A.2d 452 (Pa. Cmwlth. 1994), dealt with a legislative amendment to the Tax Reform Code of 1971, Act of March 4, 1971, as amended, 72 P.S. §§ 7101 - 10004, in 1989, adding the New Bank Tax Credit Law, Sections 1901-1909, 72 P.S. §§8901 - 8909. In a taxpayer's challenge to the tax scheme of the 1989 amendment and the addition of the bank share tax, this Court found no due process violation and concluded that "the amendments were intended to recoup an expected shortfall in that year's bank shares taxes, which is a legitimate legislative concern." Fidelity Bank, 645 A.2d at 460. In upholding a challenge to application of the statute enacted in 1991 suspending the net loss carry-forward tax deduction to the loss suffered by the taxpayer in 1989, the Court in Garofolo, Curtiss, Lambert & MacLean, Inc. v. Commonwealth, Department of Revenue, 648 A.2d 1329, 1334 (Pa. Cmwlth. 1994), held that "[a] tax deduction is not a vested right of the taxpayer" and that "[t]he net operating loss carry-forward deduction is a creature of the legislature, subject to repeal, suspension or reinstatement by the legislature, so long as it does not act in an arbitrary and unreasonable manner."

The legislative history of Act 235 establishes that it was enacted to promote the legitimate legislative purpose of closing the loophole of Act 156, advancing the equality of the tax burden and recouping the tax revenue loss that resulted from the preferential treatment conferred by Act 156. Under Carlton, Fidelity Bank and Garofolo, the application of Act 235 to the Shers' property does not constitute an unlawful retroactive application. . . . The record fails to show that the application of Act 235 "relates back and gives a previous transaction a legal effect different from that which it had under the law in effect when it transpired." R & P Servs., Inc., 541

> A.2d at 434. The Shers had no vested right in the tax reduction, and thus the Board action cannot be construed as an impermissible retroactive application of the Act.

Sher, slip op. at 9-11 (footnote omitted). For the same reasons set forth in Sher, we conclude that the application of Act 235 to the farmstead acreage located on Vianello's parcels did not constitute an impermissible retroactive application of the Act.[10]

Alternatively, Vianello contends that, even if Act 235 is applicable to his parcels, he presented sufficient evidence to establish that the farmstead acreage located on his parcels qualifies for agricultural use classification, thus entitling it to preferential tax treatment under the amended version of the Clean and Green Act. We disagree.

Following the enactment of Act 235, a landowner will receive preferential tax treatment for farmstead land, if: (1) the farmstead land is located within an area enrolled as agricultural use land; (2) the farmstead land is located within contiguous tracts of land enrolled as agricultural reserve or forest reserve, and a majority of the land in the application for preferential treatment is enrolled as agricultural use land; or (3) in the case of noncontiguous tracts of land, a majority of land on the tract where the farmstead is located is enrolled as agricultural use land. 72 P.S. § 5490.4b. Under the Clean and Green Act, land will qualify as agricultural use land, if the "land

[10] An alternative approach would be to find that the application of Act 235 to Vianello's parcels did not even constitute the retroactive application of a law, but rather merely constituted the application of a new law to a set of facts occurring after its effective date. Under this approach, Vianello's argument would be equally unsuccessful.

was devoted to agricultural use in the preceding three years and is not less than ten contiguous acres, including the farmstead land, or has an anticipated yearly gross income of at least two thousand dollars ($2,000)." 72 P.S. § 5490.3(a)(1).

Here, the Assessment Office reclassified the land on which Vianello's farmstead acreage is located from agricultural use to agricultural reserve for the 2006 tax year. In an effort to demonstrate that the reclassification was improper and that his land continues to qualify for classification in the agricultural use category, Vianello testified as to the number of crops that he had planted on his parcels in the Spring of 2006. (Trial Court Hr'g Tr. at 8-11.) Vianello also testified as to what he believed would be the anticipated gross income of the crops that he planted, which he estimated to be well in excess of $2,000. (Trial Court Hr'g Tr. at 9-11.) However, Vianello did not provide any testimony as to whether or not he had grown crops on his parcels in the previous three years, nor did he provide any testimony as to the income that he realized from such crops. Additionally, on cross-examination, Vianello admitted that only about two to three acres on Lot 1 are devoted to agricultural use. (Trial Court Hr'g Tr. at 13.) Moreover, on redirect, Vianello testified that his pumpkin patch on Lot 3 only consists of about one or one and a half acres. (Trial Court Hr'g Tr. at 24-25.) Furthermore, the Board of Assessment Appeals countered Vianello's testimony with the testimony of Mr. Hill, who established that he had requested receipts and a Schedule F "Profit or Loss from Farming" IRS form from Vianello to verify that he was actually using the parcels for agricultural purposes, but that Vianello had failed to comply with such requests.[11]

[11] Vianello similarly failed to produce this documentation at the time of the *de novo* hearing before the trial court.

(Continued…)

(Trial Court Hr'g Tr. at 19-20.) Based on the record, it appears that the land on which Vianello's farmstead acreage is located was properly reclassified from agricultural use to agricultural reserve. Thus, Vianello's farmstead acreage is not entitled to preferential tax treatment under the amended version of the Clean and Green Act.[12]

Vianello next argues that the use value for forest reserve land was unreasonably and arbitrarily raised from $40 per acre to $69 per acre for the 2006 tax year. We disagree.[13]

Pursuant to the Clean and Green Act, use values for land in forest reserve are to be determined each year by the Pennsylvania Department of Agriculture (Department). 72 P.S. § 5490.4a(c). However, the county assessor may establish use values that are less than the values determined by the Department as long as such

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[12] Because Vianello's parcels are contiguous, the farmstead acreage located thereon would qualify for preferential tax treatment if a majority of the land in his application for preferential tax treatment was in agricultural use. However, it is clear from the record that the majority of the land in Vianello's application for preferential tax treatment is classified as agricultural reserve and forest reserve. Therefore, Vianello's farmstead acreage does not qualify for preferential tax treatment under this scenario either.

[13] Vianello may be arguing that the use value applied by the Assessment Office was incorrect. To the extent that the Assessment Office applied a use value of $69 per acre to land in forest reserve, which is different from the rate that is indicated in the tax assessment records that were entered into evidence by the Board of Assessment Appeals, such use value would be incorrect. The trial court, in conducting its *de novo* review and making its own findings, applied the correct $47 per acre use value to the land in forest reserve.

values are "applied uniformly to all land in the county eligible for preferential assessment." 72 P.S. § 5490.4b(c).

Here, the assessment records that were introduced into evidence by the Board of Assessment Appeals establish that the use value for land in forest reserve that was set by the Commissioner's Office was $47 per acre, and not $69 per acre.[14] (Lot 2 Tax Assessment Record for 2006, Board of Assessment Appeals' Exhibit No. 3-B.) Moreover, Vianello did not present any evidence proving that the $47 per acre use value was greater than the use value that was set by the Department or that the $47 per use value was not uniformly applied. Furthermore, the record reflects that the trial court correctly applied the $47 per acre use value in conducting its *de novo* review and in making its own findings as to the values of Vianello's parcels.[15] Therefore, we conclude that Vianello's argument is without merit.

Finally, Vianello argues that he did not receive proper notice of the change to his tax assessments because the Assessment Office failed to notify him that it intended to raise his assessments before actually doing so and failed to state the reason for the increase. We disagree.

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[14] The Board of Assessment Appeals submitted tax assessment records for Lot 1, Lot 2, and Lot 3. The tax assessment record for Lot 2 shows that the use value for land in forest reserve was $47 per acre. (Lot 2 Tax Assessment Record for 2006, Board of Assessment Appeals' Exhibit No. 3-B.)

[15] The trial court found that the total value of Lot 2 for tax purposes was $4,079. If we divide $4,079 by 86.79 acres, we can discern that the trial court applied the $47 per acre use value to the land classified as forest reserve. It is unclear from the record whether or not the Assessment Office applied the $47 per acre use value in calculating the assessments for Vianello's parcels. The assessments for Vianello's parcels should reflect the $47 per acre use value.

Vianello acknowledges in his brief that his argument for pre-change notification is contrary to our decision in Close v. Berks County Board of Assessment Appeals, 839 A.2d 462 (Pa. Cmwlth. 2003), but asks us to modify and/or overturn that decision. However, Vianello fails to cite to any authority in support of his argument. Thus, we decline to modify and/or overturn Close, which remains controlling on this issue. In Close, we held that the taxpayers were provided with adequate notice where the assessment office had sent them a post-change notice, which: (1) advised the taxpayers of the reason for the change and (2) advised the taxpayers of the right to appeal to the board of assessment appeals within 40 calendar days. Id. at 465-66.

Here, the Assessment Office sent Vianello post-change notices for each of his parcels, which contained the following language:

> This is a notice of change in the assessed value on the property described below. If you are aggrieved by this new assessment, a written statement of intention to appeal must be filed with the [Board of Assessment Appeals], located at the [Assessment Office] . . . . Forms for this purpose can be obtained at the [Assessment Office] during business hours 8:30 a.m. to 4:30 p.m., Monday through Friday (holidays excepted). …
>
> The value of your real estate assessment has been changed from that fixed in the preceding assessment roll due to 1) improvements made or 2) corrected information on your property since the date of your last assessment 3) or change in land value. The law provides that any person aggrieved by such change or by any assessment, as well as the taxing district, may appeal to the [Board of Assessment Appeals] for relief by filing with the board, within Forty (40) days of the date of this notice, a statement in writing of such intention to appeal,

> designating the assessment or assessments by which such person is aggrieved, the property code number(s) and the address to which a notice of when and where to appear for a hearing of the appeal shall be mailed as set forth under the provisions of Section 701. Act VII of the Act of May 21, 1943, P.S. 571 as amended. No person shall be permitted to appeal from any assessment in any year unless he shall first have filed the statement of intention required by this section, nor shall any person be permitted to appeal as to any assessment not designated in such statement.

(Notices of Property Assessment, August 31, 2005.) This language demonstrates that, like the taxpayers in Close, Vianello was advised of the reason for the change in his assessments and was advised of the right to appeal to the Board of Assessment Appeals within 40 days. Therefore, we conclude that Vianello's argument that he did not receive proper notice of the change in his tax assessments is without merit.

Accordingly, for the reasons discussed above, the order of the trial court is affirmed.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Vianello,	:	
	:	
Appellant	:	
	:	
v.	:	No. 51 C.D. 2007
	:	
Monroe County Board of Assessment Appeals	:	

O R D E R

NOW, February 20, 2008, the order of the Court of Common Pleas of Monroe County in the above-captioned matter is hereby **AFFIRMED.**

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RENÉE COHN JUBELIRER, Judge