IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

AWESOME VIEW PROPERTIES INC, Plaintiff/Appellant	:	
Vs.	:	No. 13-2523
CARBON COUNTY BOARD OF ASSESSMENT APPEALS, Defendant/Appellee	:	

Kim Roberti, Esquire — Counsel for Appellant
Robert Frycklund, Esquire — Counsel for Appellee
Gregory Mousseau, Esquire — Counsel for Intervener

MEMORANDUM OPINION

Matika, J. - June 10, 2016

This is a Tax Assessment Appeal. The issue to be decided is whether the Carbon County Board of Assessment Appeals was correct in re-assessing four (4) individual lots owned by Awesome View Properties, LLC, the same four (4) lots having previously been assessed as a single "bulk" parcel from a previously recorded subdivision plan. For the reasons stated herein, this Appeal is denied.

FACTUAL AND PROCEDURAL BACKGROUND

This case comes before the Court from a Petition for Allowance of Appeal filed by Awesome View Properties LLC, (hereinafter "Awesome View") on December 6, 2013. The Respondent is the Carbon County Board of Assessment Appeals (hereinafter "The Board") and the Intervenor is the Jim Thorpe Area School District (hereinafter "Jim Thorpe"). Awesome View is challenging The

Board's reassessment of its four (4) parcels, now known as 83B-17-A17,18, 83B-17-A9,10, 83B-17-A21,22, and 83B-17-A19,20, respectively. In lieu of an evidentiary hearing, Counsel for all parties executed "stipulated facts" for the Court to consider. The facts stipulated to are as follows:

1) The properties were originally subdivided in or about 1909 and a subdivision plan was filed in Carbon County map book 1, page 11.

2) In or about August 1986, a "Final Plan Supplemental Clarification" plan was prepared and filed in Carbon County map book 1, page 901.

3) Carbon County was the subject of a county-wide reassessment in 2001. During the county-wide reassessment, the vast majority, if not all, of the properties in the county were reassessed for property tax purposes. The property that was the subject of this appeal was reassessed at that time as well.

4) The subdivision of the subject properties appearing in Carbon County map book 1, page 901 existed at the time of the last county-wide reassessment in 2001.

5) There has not been any further subdivision of the properties that are the subject of this appeal since the last county-wide reassessment in 2001.

6) Awesome View purchased or received title to the subject property by deed recorded on August 8, 2006, in Carbon County deed book 1486, page 421.

7) Awesome View Properties is the owner of the following tax parcels:

Number	Assessed Value
83B-17-A9,10	$10,650
83B-17-A17,18	$10,650
83B-17-A19,20	$10,650
83B-17-A21,22	$10,650

8) Prior to the issuance of the notice of assessment attached as exhibit A, the four parcels had been assessed as one tax

parcel known as 83-17-J2.05, with a single tax assessment of $14,650 for the entire parcel.

9) On or about November 7, 2012, the Carbon County Board of Assessment issued a notice of assessment change for the subject properties.

10) The Carbon County Board of Assessment's "splitting" up of (sic) re-assessing of the property as individual lots (parcel nos. 83B-17-A9,10 83B-17-A17,18 83B-17-A19,20 83B-17-A21,22) as (sic) prompted by its policy to individually assessing lots within a subdivision rather than treating them as one "bulk" assessment.

As a result of the decision of The Board to issue notices of assessment for these four (4) parcels, Awesome View filed an Appeal on December 6, 2013. In this Appeal, Awesome View alleges that The Board's decision was "arbitrary and capricious, not in conformity to law, not supported by substantial evidence, and was otherwise invalid and unconstitutional . . . ." In its brief, however, Awesome View only argues that the policy of The Board in individually assessing the four (4) parcels in question was based on a condition that existed at the time of the last county-wide assessment in 2001 and was therefore an illegal spot assessment. Consequently, the only issue that will be addressed herein will be: "Whether or not the Carbon County Assessment Board, in following its policy of individually assessing lots within a subdivision rather than maintaining them as part of a "bulk" assessment, caused impermissible spot assessment to occur where there were no circumstances prompting such a reassessing?"

LEGAL DISCUSSION

Once a property is assessed, that value cannot be changed absent one of the following circumstances: a county-wide assessment; an appeal by a landowner or taxing authority, when a downward adjustment is necessary; when there is a need to correct a mathematical or clerical error; or when property is improved, there has been a change in economic circumstances, or when land is divided and conveyed. *In Re Young*, 911 A.2d 605 (Pa. Commw. Ct. 2006). This Court's focus will be on the latter two (2) reasons and more specifically: correcting an error and when land is divided and conveyed.

> 53 Pa. C.S.A. §8817(a) reads in pertinent part, " . . . the assessors may change the assessed valuation on real property when a parcel of land is subdivided into smaller parcels . . .. The recording of a subdivision plan shall not constitute grounds for assessment increases until lots are sold or improvements installed.[1]" Further subsection (b) of that same statute states that, "A change in the assessed valuation on real property authorized by this section shall not be construed as a spot reassessment under section §8843 (relating to spot assessment)."

In *Kraushaar v. Wayne County Board of Assessment and Revision of Taxes*, 603, A.2d 264 (Pa. Commw. Ct. 1992), a developer subdivided 119.119 acres of lands into twenty-seven (27) separate lots. After recording that subdivision plan, one of the lots was

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[1] Various previous versions of this statute dating back to 1931 appear to reference the same language regarding an assessment offices' right to change the assessment when a parcel of land is divided and conveyed. (*See EG.*, 72 P.S. §5453.602a and 72 P.S. §5347.1, both since repealed in favor of the existing statute).

sold. Thereafter, the Board of Property Assessment raised the assessment from $17,800 to $147,300.[2] The developer thereafter filed twenty-six (26) appeals. While recognizing that the mere filing of a subdivision plan does not provide grounds for an assessment until lots are sold, the Commonwealth Court, in upholding the decision of the trial court in permitting these assessments, stated:

> Moreover, it has been consistently held that the uniformity provision of the Pennsylvania Constitution requires that all real estate similarly situated must be taxed at the same amount. In *Lower Merion Township v. Madway*, 427 Pa. 138, 147, 233 A.2d 278 (1967), our Supreme Court struck down a provision that exempted new residential construction from increased taxation until it was sold as being violative of the uniformity provision of the Pennsylvania Constitution. It held that uniformity demands that the "one person's real estate tax must be computed in the same manner as his neighbors." (Emphasis in original.) By adopting Developers' suggested interpretation, unconstitutional non-uniformity of taxation of the type struck down in *Lower Merion* would result. As in *Lower Merion*, one landowner's property would be valued differently than his or her neighbor's simply because his or her lot was or was not sold. To give a simple example: a developer, having a two acre parcel assessed at a fair market value of $10,000, subdivides the two acre parcel into two identical one acre lots, then sells one of the acre lots for $10,000. Under the Developers' interpretation, the lot sold would be assessed at $10,000 and the other identical parcel at $5,000 (half of the $10,000), even though both for all intents and purposes are identical. Such a result, whether it involves a two lot or a 27 lot subdivision, would violate the uniformity requirement of Article IX, Section 1 of the Pennsylvania Constitution, because owners of neighboring lots would pay substantially different amount in real estate taxes.

Kraushaar at 266.

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[2] This amount was the aggregate of the twenty-six (26) new assessments on each of these lots.

In the case *sub judice,* the original subdivision plan was recorded in 1909 as being those "lots laid out for the Carbon Transit Co."[3] In 1986, a "Final Plan Supplemental Clarification" plan was filed.[4] This plan encompasses ten (10) lots from the previous subdivision plan and in each instance "combines" at least two (2) former lots into one lot. Thereafter, in August, 2006, the Carbon County Sheriff's Office, by its Deed recorded August 8, 2006, conveys interests in various tax parcels to Awesome View.[5] Included in this Deed conveyance are the attached subdivision plans referenced above.

Of particular note through the descriptions identified in this deed are numerous references to adjoining property owners, suggesting that various lots from the original subdivision plan and the supplemental clarification plan had previously been sold or conveyed out of the subdivision. Further, as stipulated to by counsel for the parties, no further subdivision occurred to any of these parcels since the 2001 county-wide reassessment and that the subdivision plan from 1986 was the plan in existence at the time of the last county-wide reassessment. Additionally, counsel for the parties stipulated that the four (4) parcels that are the

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[3] Exhibit "C" attached to the "stipulated facts."

[4] Exhibit "D" attached to the "stipulated facts."

[5] Exhibit "B" attached to the "stipulated facts."

subject of this appeal were reassessed as well.[6]

It is evident that since the original subdivision plan was filed in 1909, there have been some lots sold from that subdivision up to the time of the last recorded deed in 2006. The case law and statutory authority therefore suggests that once a single lot is sold from that subdivision, The Board can re-assess the remaining lots and do so individually. However, that (the sale of a lot or lots) is not what prompted The Board to reassess these four (4) lots. In other words, the reassessment of these four (4) parcels did not occur in connection with a subdivision, but rather was instituted once a principal of Awesome View brought this fact to the Board's attention. That is when The Board, implementing its "policy" to "individually assess(ing) lots within a subdivision rather than treating them as one bulk assessment" reassessed these four (4) parcels separately.

The Board alleges that the policy, as it related to the subject parcels, was utilized in order to "correct" a clerical error when it failed to recognize that these four (4) parcels, when they were conveyed to Awesome View in 2006, originated from a larger, bulk tract of land. Undoubtedly, at that time, and in accordance with applicable case law and statutory authority, The Board would have been within its province to reassess them. Due

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[6] While unsure of the specific meaning of the use of the word "reassessed" in this context (as no specific value was placed on these four parcels until 2012), for purposes of this appeal, the Court will assume counsel means that they were subject to the re-assessment process that occurred in 2001.

to this clerical error, it did not.

Pursuant to 53 Pa. C.S.A. §8816(b), "nothing in this section shall be construed as prohibiting an assessment officer from increasing an assessment for the current taxable year upon the discovery of a clerical or mathematical error."

In Awesome View's deed from the Carbon County Sheriff's Office, it received what appears to be several hundreds of acres of real estate encompassed within six (6) different tracts.[7] This conveyance appears to have been obtained from the Sheriff's Sale because of a judgment obtained by Marianne S. Lavelle, Esquire, against Flagstaff Mountain Park Inc., a previous owner as indexed in 05-2352 and not from any further subdivision of the property. This real estate, containing the four (4) subject parcels identified in this deed known as tax parcel 83-17-J2.05, was never individually assessed back in 1986 when the Board should have done so. The Board did not recognize the existence of these four lots which, at the time of the prior subdivision were identified as individual lots, but without individual assessments or even separate tax parcel numbers. In accordance with case law, once a lot was sold from this subdivision, all remaining lots were subject to reassessment as individual lots. This was not done and was clearly an error on the part of The Board.

"If the taxing authority were not permitted to correct

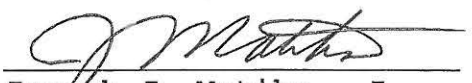
[7] Excepted from those tracts are a number of previous conveyed tracts of lands to various purchasers/owners over a number of years.

clerical or mathematical assessment errors, uniformity would not be maintained and such non-uniform assessment would be illegal as violative of both our constitution and the assessment law." *Callas v. Armstrong County Board of Assessment*, 453 A.2d 25, 27 (Pa. Commw. Ct. 1982). Additionally, the records in existence at the time of the last county-wide assessment in 2001 clearly would have shown the existence of the 1986 subdivision plan and subsequent conveyance of lots contained therein. The "policy" of The Board, while appearing to "catch" those bulk acreage lots not subject to individual assessments, in actuality at least in this case was a means to correct an error to "accurately reflect the information at the time of the last county-wide re-assessment." *Blanda v. Somerset County Board of Assessment Appeals*, 131 A.3d 560 (Pa. Commw. Ct. 2016). This is permitted.

CONCLUSION

Based on the foregoing, the Appeal of Awesome View Properties LLC, is **DENIED** and the assessments for tax parcels 83B-17-A9,10, 83B-17-A17,18, 83B-17-A19,20, and 83B-17-A21,22 shall each stand at $10,650.00.[8]

BY THE COURT:



Joseph J. Matika, J.

[8] Despite appealing the Board's authority to assess these four (4) parcels, Awesome View never challenged the valuation should this Court find the actions of the Board were proper. Thus, the valuations will stay as well.