IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James R. Herzog, As Power of Attorney For Scott B. Herzog,	:	
Appellants	:	
v.	:	No. 413 C.D. 2014
McKean County Board of Assessment Appeals	:	Argued: December 8, 2014

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: January 27, 2015**

James R. Herzog, As Power of Attorney for Scott B. Herzog (Herzog), appeals the Order of the Court of Common Pleas of McKean County (trial court) sustaining the Preliminary Objections (POs) of the McKean County Board of Assessment Appeals (Board) and dismissing, with prejudice, Herzog's Petition for Appeal (Petition) from the Board's denial of his tax assessment appeals. The tax assessments at issue were preferential assessments authorized by the Pennsylvania

Farmland and Forest Land Assessment Act of 1974,[1] commonly known as the Clean and Green Act. On appeal to this Court, Herzog contends that: (1) the trial court erred by not holding a *de novo* evidentiary hearing on the matter; (2) the changes to the preferential assessed values of his properties are invalid; and (3) the changes to the preferential assessed values of his properties are illegal spot reassessments. Upon review, we affirm.

I. The Clean and Green Program

The Clean and Green Act established a land conservation program, known as the Clean and Green Program, that "protect[s] a landowner from being forced to . . . sell a portion of … [his] land in order to pay unusually high taxes." Sher v. Berks County Board of Assessment Appeals, 940 A.2d 629, 631 n.2 (Pa. Cmwlth. 2008) (internal citations omitted). In order to encourage conservation, the Clean and Green Program often "provides a lower tax rate appropriate for land devoted to farming and forest reserve purposes" by enabling landowners to apply for preferential assessments. Feick v. Berks County Board of Assessment Appeals, 720 A.2d 504, 505 (Pa. Cmwlth. 1998). Land comprised of ten or more contiguous acres that is in forest reserve is eligible for preferential assessment. Section 3(3) of the Clean and Green Act, 72 P.S § 5490.3(3).

The methodology for calculating preferential tax assessments for reserve forest land is outlined in the Clean and Green Act and the Department of Agriculture's (Department) regulations. 7 Pa. Code §§ 137b.1 – 137b.133. By

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

May 1 of each year the Department must provide "to all county assessors use values for land in forest reserve." Section 4.1(c) of the Clean and Green Act, 72 P.S § 5490.4a(c).[2] "In calculating appropriate county-specific forest reserve use values . . . the Department [must] consult with the Bureau of Forestry of the Department of Conservation and Natural Resources." 7 Pa. Code § 137b.51(b)(2). Although the Department provides its recommendation, it is ultimately the duty of county assessors to "establish a total use value for land in forest reserve by considering available evidence of capability of the land for its particular use." Section 4.2(b) of the Clean and Green Act, 72 P.S. § 5490.4b(b).[3] Assessors may elect to: (1) not reassess annually by establishing "a base year for preferential assessment of enrolled land in the county,"[4] 7 Pa. Code § 137b.53(b)(2); (2) accept the Department's annual use value figures, 7 Pa. Code § 137b.53(c); or (3) establish their own use values by "considering available evidence of capability of the land for its particular use," so long as the values are less than those provided by the Department and are "applied uniformly to all land in the county eligible for preferential assessment," 72 P.S. § 5490.4b(b) – 5490.4b(c). If the enrolled land under a previous assessment has use values that are higher than the use values

[2] Added by Section 4 of the Act of December 21, 1998, P.L. 1225.

[3] Added by Section 4 of the Act of December 21, 1998, P.L. 1225, as amended.

[4] Section 8802 of the Consolidated County Assessment Law, 53 Pa. C.S. § 8802, defines base year as:

> The year upon which real property market values are based for the most recent countywide revision of assessment of real property or other prior year upon which the market value of all real property of the county is based for assessment purposes. Real property market values shall be equalized within the county and any changes by the board shall be expressed in terms of base-year values.

provided by the Department, the county is required to recalculate "the preferential assessment of all enrolled land . . . using either the current use values . . . provided by the Department or lower use values established by the county assessor." 7 Pa. Code § 137b.53(c).

Regardless of the method chosen by the assessor, once use values are determined, the assessor establishes the preferential assessed value by "multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory. . . ." 7 Pa. Code § 137b.51(d). "For example, for a 100 acre parcel that is 70 percent farmland and 30 percent forest reserve, the county assessor would apply the agricultural use value to 70 acres and the forest reserve use value to 30 acres to generate the preferential tax assessment for the entire parcel." Herzog v. McKean County Board of Assessment Appeals, 14 A.3d 193, 196 (Pa. Cmwlth. 2011) (Herzog I).

If the county assessor accepts the Department's maximum use value, Section 5(a)(3) of the Clean and Green Act states that it is the duty of the tax assessor to:

> notify in writing the owner of a property that is preferentially assessed under this act . . . of any changes in the fair market value, the normal assessed value, the land use category and the number of acres enrolled in each land use category, the use value under section 4.2 or the preferentially assessed value within five days of such change.

72 P.S. § 5490.5(a)(3). Under Section 9(a) of the Clean and Green Act, "[t]he owner of a property which is subject to preferential assessment or for which preferential assessment is sought, and the political subdivision in which said

property is situated, shall have the right of appeal in accordance with existing law." 72 P.S. § 5490.9(a).

With the foregoing in mind, we now turn to the merits of Herzog's appeal.

II. Factual Averments

The basic facts of this case are undisputed. Herzog owns four properties that are enrolled in the Clean and Green Program as forest reserve. The properties have a combined area of approximately 1400 acres. Herzog received four notices issued by the McKean County Assessor (Assessor) on July 8, 2013, listing the changes to the preferential assessed values of his properties. (Petition Exs. A-D, R. Item 18.) The notices were all sent under the letterhead of "McKean County Assessment and Revision of Taxes," and state that "[t]he County Assessor has set a new *Assessed Value* on this property." (Petition Exs. A-D) (emphasis in originals.) The notices show the "market value," the "assessed value," and the "old assessed value" of the properties, and the respective values under the Clean and Green Program. (Petition Exs. A-D.)

In all except one property,[5] the notices show no change to the assessed values based on the market values of the properties, but show significant changes

[5] The notices pertaining to three of Herzog's four properties show no change between the "old assessed value" and the "new assessed value" of the properties. These two categories relate to the market value of the properties. In Exhibit B to the Petition, however, the notice shows a $64,220 "old assessed value" and a $63,080 "new assessed value." This downward adjustment is not challenged by Herzog and nothing in the record explains why this adjustment occurred. Because Herzog does not challenge the assessed value of the property associated with Exhibit B, we will not address this anomaly any further.

to the preferential assessed values under the Clean and Green Program.[6] (Petition Exs. A-D.) The "old assessed" preferential values under the Clean and Green program were set by applying the use value for forest reserve land in McKean County established by orders of the Board in 2011 and 2012 for tax years 2012 and 2013, respectively. (Petition at ¶ 5.) The new Clean and Green values were set when the Assessor applied a $280 per acre use value "uniformly for all open and wooded areas effective for the 2014 tax year." (Herzog's Hr'g Ex. 5, R. Item 20.) The Assessor established the $280 figure by rounding down the $280.78 per acre use value established by the Department for all forest reserve land enrolled in the Clean and Green Program in McKean County. (Board's Hr'g Ex. 1, R. Item 20.) Due to this change, Herzog's tax liability for the subject properties increased by close to 300 percent. (Petition at ¶ 4.)

Herzog appealed the preferential assessment changes for the four properties to the Board, which denied the appeals on October 25, 2013. On November 6, 2013, Herzog filed the Petition with the trial court appealing the Board's denial.

[6] The Clean and Green preferential assessed values for tax years 2012, 2013, and 2014 for all four properties are as follows:

PROPERTY #	**2012**	**2013**	**2014**
27,006-201-00	18,050	18,050	53,760
27,006-302-00	15,500	16,430	48,940
24,006-429-01	12,480	12,840	38,250
24,007-300-901	65,200	66,580	198,310

(Petition at ¶ 4; Petition Ex. B) The Petition mistakenly lists the 2014 Clean and Green Value for property 27,006-302-00 as 49,920; however, the actual notice lists 48,940.

Therein, Herzog requested that the trial court order that the preferential assessed values of his properties be returned to previous levels because (1) the Assessor did not have the power to change the preferential assessed values of his properties, and (2) the changes were illegal spot reassessments. The Board filed POs in the nature of a demurrer to the Petition on November 26, 2013. After a hearing on the matter on January 22, 2014, the trial court concluded that Herzog's assertions were legally insufficient, sustained the POs and dismissed his Petition. Herzog now appeals to this Court.[7,8]

III. *De Novo* Hearing

On appeal to this Court, Herzog first argues that the trial court erred by entertaining the Board's POs rather than conducting a full *de novo* hearing on the Petition. Herzog argues that, when tax assessment appeals are heard before the trial court, precedent dictates that the hearing is *de novo* and that Section 9 of the Clean and Green Act provides him with a right to a full *de novo* hearing.

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[7] This is the third time a dispute between Herzog and McKean County regarding the Clean and Green Program has come before this Court. See Herzog I, 14 A.3d at 200-205 (holding that Herzog did not produce sufficient evidence necessary to challenge the validity of the Board's valuation for tax years 2000-2011); Lzog L.P. v. McKean County Board of Commissioners (Pa. Cmwlth., No. 2098 C.D. 2013 (Herzog II), filed October 3, 2014) (holding that Herzog could not stop assessment changes for tax year 2013 through a mandamus action). The instant appeal addresses tax year 2014.

[8] "Our scope of review is limited to determining whether the trial court committed an error of law or abused its discretion." Locust Lake Village Property Owners Association, Inc. v. Monroe County Board of Assessment Appeals, 940 A.2d 591, 594 n.8 (Pa. Cmwlth. 2008). "In examining questions of law, our review is plenary." Tomaskevitch v. Specialty Records Corporation, 717 A.2d 30, 32 (Pa. Cmwlth. 1998).

As stated previously, under Section 9(a) of the Clean and Green Act, "[th]e owner of a property which is subject to preferential assessment or for which preferential assessment is sought, and the political subdivision in which said property is situated, shall have the right of appeal in accordance with existing law." 72 P.S. § 5490.9(a). It is well settled that when a tax assessment appeal is brought to a trial court, the court's proceedings are *de novo*. Deitch Co. v. Board of Property Assessment, Appeals and Review of Allegheny County, 209 A.2d 397, 402 (Pa. 1965). As explained by our Supreme Court in Deitch:

> [T]he proper order of proof in cases such as the present one has long been established. The procedure requires that the taxing authority first present its assessment record into evidence. Such presentation makes out a prima facie case for the validity of the assessment in the sense that it fixes the time when the burden of coming forward with evidence shifts to the taxpayer. If the taxpayer fails to respond with credible, relevant evidence, then the taxing body prevails. But once the taxpayer produces sufficient proof to overcome its initially allotted status, the prima facie significance of the Board's assessment figure has served its procedural purpose, and its value as an evidentiary devise is ended. . . . Of course, the taxpayer still carries the burden of persuading the court of the merits of his appeal.

Id.

The trial court in the case *sub judice* did not conform to the normal structure of *de novo* tax assessment hearings as described above. The Board treated Herzog's Petition as a civil complaint and asserted that preliminary objections were proper in this context. (Board's Preliminary Objections and Memorandum of Law at ¶ 4, R. Item 17.) Herzog then admitted that preliminary objections were appropriate in his Reply to the Board's POs. (Plaintiff's Reply to the Defendant's First Set of Preliminary Objections at ¶ 4, R. Item 11.) Neither party objected to the procedure during the January 22, 2014 hearing and submitted evidence into the

record as they would in a *de novo* hearing. Finding only questions of law in dispute, the trial court sustained the Board's POs and dismissed Herzog's Petition.

As mandated by our precedent, tax assessment appeals are heard *de novo* by the trial court. Therefore, the parties here were not correct in asserting that preliminary objections were appropriate in a tax assessment appeal.[9] Notwithstanding the impropriety here, we conclude that Herzog waived the right to challenge the Board's POs as improper on appeal to this Court because he did not raise an objection to the procedure in his Reply to the Board's POs or at the January 22, 2014 hearing on the matter.[10] However, because Herzog raised only

[9] Rule 1028 of the Pennsylvania Rules of Civil Procedure governing preliminary objections is irrelevant here because "the [R]ules of Civil Procedure are inapplicable" to tax assessment appeals. Appeal of Borough of Churchill, 575 A.2d 550, 553 (Pa. 1990). Trial courts are "empowered to regulate practice and procedure before them when a void exists" so long as the practice is not in "violat[ion of] the Constitution or laws of the Commonwealth or United States, or [the Supreme Court's] state-wide rules." Id. at 554. There is, however, no void in this area of law and the trial court was required to follow the process mandated by our Supreme Court in Deitch.

[10] The hearing transcript shows that the trial court considered whether preliminary objections were the proper procedure and Herzog raised no objection to the procedure. The relevant section of the transcript reads:

> THE COURT: I'm going to have to look at whether or not [the Board's contention that only legal issues are involved in this case is] really the basis for preliminary objections . . . I hate to drag something out when we don't need to, especially on that issue of judging who made the decision and looking at the notice that says the County Assessor has established the following –
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> [HERZOG's COUNSEL]: Yeah, if – if the Court even considers the county's argument – the defense's argument – we believe it to be a penalty and that's really, you know, I think that's the basis of our whole claim.

(Hr'g Tr. at 42-43, R.R. at 43.B-44.B.)

legal issues, the defect in the proceedings did not affect Herzog's substantive rights.

Moreover, by submitting an exhibit into the record at the hearing showing the Department set the use values for all forest reserve land enrolled in the Clean and Green Program in McKean County at $280.78 per acre, (Board's Hr'g Ex. 1), the Board made out its prima facie case for the validity of the assessment. Since the Board made out its prima facie case, the burden shifted to Herzog to present credible evidence challenging the validity of the Board's assessment. Deitch, 209 A.2d at 402. Herzog's only response was his various legal contentions. Herzog does not assert that $280 is an invalid use value for his properties as a matter of fact. Herzog's contentions, which will be addressed below in detail, relate to the validity of the assessments and whether the change in preferential assessment was a spot reassessment. Thus, although the process employed by the trial court was not in accordance with the proceedings usually employed in tax assessment appeals, the trial court efficiently resolved Herzog's legal challenges through preliminary objections without abusing its discretion in a manner that caused injury to Herzog; therefore, any error in process was harmless.

IV. Herzog's Legal Averments

We now turn to the trial court's rulings on the legal allegations contained in Herzog's Petition. Our review of the trial court's rulings in this matter is plenary. Board of Assessment and Revision of Taxes of Forest County v. Pennsylvania General Energy Corporation, 738 A.2d 41, 43 n.4 (Pa. Cmwlth. 1999). Herzog alleges that the change to his preferential assessed values were invalid because: (1)

the name listed on the letterhead reflects an entity without authority under the law; (2) absent an appeal of the Board's Order within thirty days of issuance, the Assessor had no legal authority to change the October 2011 order which set the use value at ninety-four dollars ($94) per acre; and (3) the changes violate the Department's policy that use values under the Clean and Green Program can never exceed the fair market value of a property. We shall address Herzog's arguments seriatim.

Section 5(a)(3) of the Clean and Green Act requires that county assessors notify landowners of changes to use or preferential values. 72 P.S. § 5490.5(a)(3). Herzog argues that the letterhead on the notices he received from Assessor shows that the notices were produced by a fictitious entity. He claims that the letterhead lists the sender as "McKean County Assessment and Revision of Taxes" and that there is no government agency in McKean County with that name.

Herzog raised this precise issue in his mandamus petition addressed by this Court in Lzog L.P. v. McKean County Board of Commissioners (Pa. Cmwlth., No. 2098 C.D. 2013, filed October 3, 2014) (Herzog II), and we now reach the same conclusion.[11] Notwithstanding the embellished title of the Assessor's office listed

[11] In Herzog II, this Court reasoned as follows:

> To put it mildly, Plaintiffs' arguments are hard to follow, especially with regard to the charges of a "fictitious government entity" and "fraudulent" notices. We note generally that the notices of change of assessment attached to Plaintiffs' complaint are on a letterhead bearing the title "McKean County Board of Assessment Appeals." The notices also state that "The Board of Assessment Appeals has set a new *Assessed Value* on this property." Plaintiffs apparently contend that the Board cannot initiate changes of assessments of property, and the

(Continued…)

on the letterhead, Herzog cannot escape the fact that the letter did come from the Assessor. The Assessor's name is listed on the letterhead directly below the heading and the text of the letter clearly states: "[t]he County Assessor has set a new *Assessed Value* on this property." (Petition Exs. A-D.) As such, the notices were clearly from the Assessor and complied with the statutory notice requirements.

Herzog also avers that, once the Board sets use values for the properties, use values cannot be increased absent a timely appeal of the decision. (Petition at ¶ 10b.) Herzog alleges that the use value of his properties was set at $94 per acre by the Board's order of October 19, 2011. (Petition at ¶ 4.) Herzog argues that, because no appeal was filed to this order, the use values of his properties cannot change unless the land was repurposed or improved, clerical or mathematical errors required correcting, or the Assessor conducted a new county-wide assessment. (Herzog's Br. at 22.)

Herzog's contention that the Assessor cannot change use values set by an order of the Board addressing previous tax years is contradicted by the statutory scheme of the Clean and Green Act. The Clean and Green Act establishes an annual process for determining preferential values. Section 4.1(a) of the Clean and Green Act provides that "[b]y June 30, 1999, and by May 1 of each year thereafter,

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> Board denied doing so. Immediately below the title of the letterhead, however, appear the County assessment office address, telephone number and fax number, the names of the Commissioners of McKean County, the names of the members of the Board, and the name of the Chief Assessor.

Id., slip op. at 14 (emphasis in original).

the department shall establish and provide to all county assessors county-specific use values for land in agricultural use and agricultural reserve in accordance with this section." 72 P.S. § 5490.4a(a). Upon receiving the values from the Department, county assessors may choose to do nothing and maintain current use values so long as those values are below the values provided by the Department. 7 Pa. Code § 137b.53(b). They may also decide to accept the recommendation of the Department, or to develop their own use value, so long as the use value is less than that provided by the Department and is applied uniformly to all land eligible for preferential assessment. 72 P.S. § 5490.4b(c).

Herzog cites this Court's decision in Sher to substantiate his assertion that a county assessor may not "reassess less than an entire county except as correction of errors." (Herzog's Br. at 31.) Unfortunately, Herzog cites an incomplete quote. In Sher we quoted our earlier decision in Vees v. Carbon County Board of Assessment Appeals, 867 A.2d 742, 747 (Pa. Cmwlth. 2005), and concluded that "county assessors and the board 'cannot reassess less than an entire county except as correction of errors *or as otherwise specifically provided by statute*.'" Sher, 940 A.2d at 633 (emphasis in original). In fact, this Court held that "[t]he trial court's conclusion that the Board may change the preferential assessments of [Clean and Green properties] only if a change is made as part of a countywide reassessment is not supported by the statutory scheme." Id. at 634.

In addition to our decision in Sher, Herzog relies on Section 4(b) of the Clean and Green Act and argues that the provision forecloses a change in assessments by providing that "[p]referential assessment shall continue under the

initial application . . . until land use change takes place." 72 P.S. § 5490.4(b). However, Herzog cites the statutory provision out of context. Section 4(b) of the Clean and Green Act governs applications for preferential assessment.[12] Section 4(b), when put in its proper context, provides that the determination of whether a parcel of land qualifies for preferential assessment does not change unless the use of that land changes. Section 4(b) does not, nor does any other section of the Clean and Green Act, stand for the assertion that once set, use values and the resulting preferential assessments cannot change. The Clean and Green Act provides county assessors with the authority to annually assess the use values of all Clean and Green properties in their respective counties. 72 P.S. §§ 5490.4a, 4b; see also 7 Pa. Code § 137b.53(b) (stating that county assessors must calculate preferential assessments for enrolled land through using either "of the following methods: (1) Calculate the preferential assessment of all of the enrolled land in the county each year[; or] (2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment"). What the Board decided in its 2011 and 2012 orders is not relevant to a decision by the Assessor in 2013 for tax year 2014 since the Assessor is not

[12] Section 4(b) provides:

> Each owner of land qualifying under this act as agricultural use, agricultural reserve and/or forest reserve, desiring preferential use assessment shall make application to the county board of assessment appeals of the county in which the land is located. Except as provided in subsection (b.1), such application must be submitted on or before June 1 of the year immediately preceding the tax year. Preferential assessment shall continue under the initial application or an application amended under subsection (f) until land use change takes place.

72 P.S. § 5490.4(b).

required to accept previous assessments. Accordingly, the Assessor did not act outside her authority by changing Herzog's preferential assessment for tax year 2014.

Finally, Herzog avers that the change notices were invalid because two of the notices he received show preferential assessed values above the market values of the properties.[13] Although Herzog contends that the Secretary of Agriculture and Director of the Bureau of Farmland Preservation conclude that Clean and Green preferential assessed values cannot exceed fair market value, Herzog fails to cite to any legal authority capable of guiding this Court. Herzog points to no source that would be binding on, or even persuasive to, this Court.[14] The only cite Herzog employs is to F & M Schaeffer Brewing Company v. Lehigh County Board of Appeals, 610 A.2d 1, 4 (Pa. 1992), where the Supreme Court acknowledges that, "[b]ecause value-in-use is based on the use of the property and the value of that use to the current user, it may result in a higher value than the value in the marketplace." Id.

[13] Exhibit C to the Petition shows parcel 24,006-429-01 as having a market value of $30,000 and a Clean and Green value of $38,250. Exhibit D shows parcel 24,007-300-901 as having a market value of $ 198,240 and a Clean and Green value of $198,310.

[14] Herzog attempted to illustrate the Department's view by placing a letter explaining the Clean and Green Program from the Secretary of Agriculture to a member of the House of Representatives into the Reproduced Record. (Letter from the Secretary of Agriculture to Rep. Martin Causer, April 16, 2014, R.R. at 2.D.) Because this letter was not included in the record of the trial court, we cannot consider it. See B.K. v. Department of Public Welfare, 36 A.3d 649, 657 (Pa. Cmwlth. 2012) (stating that "[d]ocuments attached to a brief as an appendix or reproduced record may not be considered by an appellate court when they are not part of the certified record"). Even if we could assess this letter, it is of no persuasive value because it is not an official policy statement of the Department.

Herzog is correct that the scheme of preferential assessments is designed to give tax advantages to landowners who enroll in the Clean and Green Program, and that the preference may not be as advantageous when a property's preferentially assessed value under the Clean and Green Program exceeds the assessed market value. However, it is possible that where a county has not assessed properties in many years, but annually assesses use values under the Clean and Green Act, the preferential assessed value could eventually exceed the assessed fair market value.[15] The phenomenon displayed in two of Herzog's properties is the result of the Assessor properly calculating Herzog's preferential use values by rounding down the $280.78 per acre use values provided by the Department to $280 and multiplying it by Herzog's acreage, and not, as Herzog contends, the result of the Assessor exceeding her authority. Although the outcome does not provide Herzog with his expected tax benefit, adjusting the statutory scheme to ensure enrollees always receive a tax benefit is a task for the General Assembly, and not for this Court.

V. Spot Reassessment

As a final matter Herzog alleges that, by increasing his Clean and Green preferential assessed values, the Assessor conducted illegal spot reassessments. We disagree.

Section 8802 of the Consolidated County Assessment Law (Assessment Law) defines spot reassessment as "[t]he reassessment of a property or properties

[15] The change notices sent to Herzog note that the Base Year Fair Market Value for his properties is January 1, 1997. (Petition Exs. A-D.)

by a county assessment office that is not conducted as part of a countywide revision of assessment and which creates, sustains[,] or increases disproportionality among *properties' assessed values*." 53 Pa. C.S. § 8802 (emphasis added). Sections 8816 and 8817 of the Assessment Law exclude changes to the assessed valuation in the event of clerical or mathematical errors, the parcel being subdivided, improvements are made, or if the property is destroyed from its spot reassessment prohibition. 53 Pa. C.S. § 8816 - 8817.

The record does not support Herzog's allegation of spot reassessment. The prohibition against spot reassessments is to prevent an assessment that "creates, sustains[,] or increases disproportionality" among similarly situated properties. 53 Pa. C.S. § 8802. Further, Section 4.2(c) of the Clean and Green Act provides that "[a] county assessor may establish use values which are less than the values provided by the [D]epartment . . . , but lesser values shall be applied uniformly to all land in the county eligible for preferential assessment." 72 P.S. § 5490.4b(c). The properties at issue here were treated in a uniform fashion. The Department set the use values for all forest reserve land enrolled in the Clean and Green Program in McKean County at $280.78 per acre.[16] (Board's Hr'g Ex. 1.) The Assessor accepted the Department's figure, rounded it down to $280 per acre and applied it "uniformly for all open and wooded areas effective for the 2014 tax year."

[16] Herzog contends that the Assessor engaged in spot reassessment because she changed the use values for forest reserve, but made no changes to the use values of agricultural properties. Because Herzog first raises this argument in his Reply Brief to this Court, and it was neither argued below, nor raised in his Rule 1925(b) statement, this argument is waived. See Commonwealth v. Lord, 719 A.2d 306, 309 (Pa. 1998) (holding that any issues not raised in a Rule 1925(b) statement will be deemed waived).

(Herzog's Hr'g Ex. 5.) Because the Assessor followed the statutory mandate when she applied the same use value to all preferentially assessed forest reserve land enrolled in the Clean and Green Program in McKean County, no spot reassessment occurred.

For the foregoing reasons, the Order of the trial court sustaining the Board's POs and dismissing Herzog's Petition is affirmed.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James R. Herzog, As Power of Attorney For Scott B. Herzog,	:	
Appellants	:	
v.	:	No. 413 C.D. 2014
McKean County Board of Assessment Appeals	:	

O R D E R

NOW, January 27, 2015, the Order of the Court of Common Pleas of McKean County, entered in the above-captioned matter, is **AFFIRMED.**

RENÉE COHN JUBELIRER, Judge