

LEGAL MEMORANDUM
ASSESSMENT UNIFORMITY WITH "SIMILAR PROPERTIES OF THE SAME NATURE I N THE NEIGHBORHOOD" I.E "SIMILARLY SITUATED TAXPAYERS"

By:
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DECEMBER 2008 PENNSYLVANIA COMMONWEALTH COURT DECISION
CLARIFIES PA SUPREME COURT *DOWNINGTOWN* DECISION

A recent (December 5, 2008) Commonwealth Court of Pennsylvania decision in the matter of Chartiers Valley Industrial and Commercial Development Authority, Maurice A. Nernberg and Nancy N. Nernberg, Appellants v. Allegheny County, City of Pittsburgh, City of Pittsburgh School District, Appellees No. 286 C.D. 2008, ___ A2d ___ (2008) (hereinafter "Chartiers Valley") may be helpful in an approach to uniformity challenges arising under Downingtown Decision (Downingtown Area School District v. Chester County Board of Assessment Appeals and Lionville Station S.C. Associates 913 A.2d 194 (2006)).

In Chartiers Valley, the property owner appealed the assessment of his seven story office building in the First Ward of the city of Pittsburgh in Allegheny County for the tax years 2005-2007 arguing, inter alia, that the assessed value of \$451,500 exceeded the 2002 Allegheny County base year value further asserting that because in 2005-2007 other properties within Allegheny County were assessed at less than 100% of the fair market value his assessment should be reduced.

At trial, Owner submitted into evidence 15 residential sales of other properties in 2004 where the ratio was 60.13%, fifteen residential properties in 2005 where the ratios were 64.4%, and 15 residential properties sales in 2006 where the ratio was 59.05%. The Court stated in its opinion that in 2002 Allegheny County's Common Level Ratio ("CLR") was 97.5% and in 2006 the CLR was 87.3%.¹

¹ The internet web site of the Pennsylvania State Tax Equalization Board ("STEB") indicates that the CLR's of Allegheny County for 2003, 2004, and 2005 are, respectively, 93.9%, 91.3% and 91.1% (Per 72 P.S. 5020-511 (b) (2) at the Board of Assessment Appeal Level and 72 P.S.5020-518.2 (a)(2) at the Court Level would apply to each second year hence, i.e. for the tax years 2005, 2006 and 2007) use 2003 for 2005-93.9%; 2004 for 2006-91.3% and 2005 for 2007-91.3%. (The statutes [72 P.S. 5020-511(b)(2) & 518.2(a)(2) for First Class Counties; 72 P.S. 5020-511(b)(2) & 518.2(a)(2) for Second Class Counties; 72 P.S. 5349 (d. 1)(2) and 5350 (a)(2) for Second Class A and Third Class Counties; and 72 P.S.5453.702 (b)(2) &5453 704(b)(2) for Fourth to Eight Class Counties] actually say to use the Common Level Ratio for each tax year published by STEB on or before July 1 of the year prior to the tax year being appealed.) It is unquestioned that the Supreme Court in Downingtown held as unconstitutional the provision in 72 P.S.5349 (d.2) which had required the County's established predetermined ratio (in Allegheny County 100% of the 2002 base year) and not the CLR to be applied to current fair market value to determine an assessment until there was more than a15% variance (in Allegheny County a CLR below 85% or above 115%). But the Supreme Court in Downingtown also used of the Common Level Ratio of the actual tax year, not two years before so it remains uncertain whether 72 P.S. 5349 (d.1)(2) and 72 P.S. 5350 (a)(2) or their equivelants in the other

None of the aforementioned 45 property sales in the years 2004-2006 were located in “downtown Pittsburgh” (which according to the Commonwealth Court is comprised of the First and Second Wards) and most of the properties were single family properties.²

At trial, in Chartiers Valley, the taxing body presented an expert witness who testified to arm’s length sales of commercial properties of the First or Second Wards of Pittsburgh for 2004, 2005, 2006 and 2007 where the total prices of these properties exceeded their assessed value.

Before the parties went to trial, the parties had already stipulated to a reduced base year value of \$306,300 (the new base year value) as the assessed value of the property but Owner otherwise contended that he was entitled, based upon the Downingtown decision, to a further reduction of the base year value by the percentage of assessments of the aforementioned residential sales for each year. However, the Owner presented no evidence of the fair market value of the subject property for 2005, 2006 and 2007.

In rejecting the Owner’s appeal and affirming the trial court decision which had set the assessment at \$306,300, the Commonwealth Court noted:

“In a county using a base year method of assessment a taxpayer who contends that his property is unfairly assessed has two statutory remedies under Assessment Laws. A taxpayer may file an appeal on the ground that the assessed value exceeds the fair market value, using the base year value. Daugherty. [Daugherty v. County of Allegheny 920 A. 2d. 936 Pa.Cmwlt. 2007] A taxpayer

county assessment laws are to be disregarded . In Chartiers Valley, the Commonwealth Court referred to the CLR of Allegheny County as being 97.5% for 2002 and 87.3% for 2006 which agrees with STEB but which implies that one is to use the actual CLR of the same tax year and not the CLR from two years previous.

²According to research of the United States 2000 census, the overall Allegheny County population was 1,281,666 of which the City of Pittsburgh has a population of 334,563 and one school district. The First Ward and Second Ward of Pittsburgh have an approximate population of 9400+/- . (Census records are not kept by Ward so minor extrapolation with informal input from the City of Pittsburgh Planning Board was necessary). Compare this to the same 2000 Census information for e.g. Delaware County PA showing a population of 551,974 in 49 municipalities with 17 School districts (including two Chester County School Districts which include two Delaware County Townships-Chadds Ford and Thornbury -as part of two School districts in Chester County)

may also seek reduction in the assessed value by showing the actual value of the property as reduced by the County CLR is less than the County's 2002 value Id. The third method of challenging an assessment based on uniformity is recognized by our Supreme Court in Downingtown is set forth above."

In reviewing the Downingtown decision, the Commonwealth Court in Chartiers Valley then observed on page 4:

"...the Supreme Court also permitted uniformity challenges based on 'meaningful subclassifications' in short, the Supreme Court held that assessments could also be challenged based on the lack of uniformity in the assessment of properties having like characteristics and qualities. "

The Commonwealth Court then summarized the issues in Chartiers Valley being:

"(1) Whether downtown office buildings are permissible subclassifications of real estate under the assessment law so that they may be assessed differently than other properties.

(2) Whether it is constitutionally permissible to assess office buildings at one CLR and residential properties at another lesser ratio. "

Further commenting on Downingtown the Commonwealth Court noted:

"The Supreme Court in Downingtown concluded that tax assessments could also be challenged based on the lack of uniformity in the assessment of properties having like characteristics and qualities in the same areas. In reaching this conclusion the Supreme Court stated that a taxpayer may prove lack of uniformity "by presenting evidence of the assessment to value ratios of 'similar properties of the same nature in the neighborhood' Downingtown." 590 PA 467, 913 A. 2d 199 In Re Brooks Building., 391 PA 94, 101, 137 A. 2d, 273, 276 (1958). The Supreme Court stated further that it had previously acknowledged in Deitch Co. v. Board of Property Assessment, Appeals and Review of Allegheny County , 417 PA 213, 209 A. 2d, 397 (1965) "that all properties in a relevant taxing district are comparable properties for purposes of calculating the appropriate ratio of assessed value to market value (as all real estate is a class which

is entitled to uniform treatment).” Id. 467, 913 A. 2d 199. However, the Supreme Court pointed out that in the context of a uniformity challenge that “the parties and the trial court may rely upon evidence concerning assessment to value ratio of similar properties”. Id. The Supreme Court stated further that it did not find that the general uniformity precept, precluding real property from being divided into different classes for purposes of systemic property tax assessment, eliminated any opportunity or need to consider meaningful subclassifications as a component of the overall evaluation of uniform treatment in the application of the taxation scheme Id. 469, 913 A. 2d 200. As such, the Supreme Court considered that [w]hile the Commonwealth may certainly seek to achieve overall uniformity by attempting to standardize treatment among separately situated property owners, its efforts in this regard do not shield it from the prevailing requirement that similarly situated taxpayers should not be treated differently. “ Id. 470 at 913 A. 2d. 201”

The Commonwealth Court in Chartiers Valley went on to conclude that while Owner was correct that Pennsylvania law does not permit unequal taxation of different types of property, the issue is whether the owner’s property is being overly assessed in comparison to other properties located in the same taxing area. The Court then concluded that the trial court’s reading of the taxing bodies’ experts on the assessments and ratios of downtown office buildings was correct and that the downtown buildings were not under assessed and dismissed the appeal.

The Chartiers Valley court then concluded:

“In addition, the trial court pointed out that the Owner did not rely upon sales of similar kinds of business or properties but instead relied upon mostly residential properties in years 2004-2006. The trial court determined that none of the 45 property sales for the years 2004-2006 involve properties located in downtown Pittsburgh which is comprised of the First and Second Wards. As found by the trial court, this evidence could not determine that the buildings are a separate subclassification that is overassessed.”

SALES VS. APPRAISAL

Suggestion the question of whether there needs to be actual appraisals of “similar properties” as opposed to an analysis of the sales price vs. assessed value of similar properties has been put to rest. The Chartiers Valley court had no problem

accepting the sales both in the case of the taxing district and the taxpayer sales of the wrong kind of properties. This doesn't eliminate use of possible appraisals of like properties where there have been no or few recent sales but considering the extra burden and expense of appraising several properties for comparison purposes (even assuming access and information is available) this is a very practical result.

SUBCLASSIFICATION OF PROPERTY

The second issue is the "subclassification" of the property i.e. comparing to properties "having like characteristics and qualities". I think it is clear from the Chartiers Valley decision that in a Downingtown uniformity analysis, the type of property, ie. residential, commercial, (and perhaps other subclassifications [characteristics and qualities such as, office, retail, apartment, industrial]) would be the focus and not just, a comparison of the sales/assessment ratios of all of the real property sold within a particular area or taxing district.

AREA

The final point of guidance from the Chartiers Valley case is the issue of the area from which to draw the sales of "similar properties of the same nature in the neighborhood" per Downingtown. While it would be acknowledged that Allegheny County obviously differs from say Delaware County and the other counties in the state as it is significantly larger, one difference is that there is one school district that covers the entire City of Pittsburgh (i.e. one school district for a 394,000 population vs. Delaware County's fifteen (15) plus two (2) shared with Chester County).

Based upon the year 2000 census figures, the area which the court seemed to approve for a potential "neighborhood" was downtown Pittsburgh, which the court stated was comprised of the First and Second Ward which appeared to have less than 10,000 inhabitants. By analogy, this is an area which is much less than the entire School District, County and City of Pittsburgh and seems to comprise more of a geographical area with common characteristics.

The question comes down to whether an appropriate area or "neighborhood" of comparative measurement of "similar properties of the same nature" or of "similarly situated taxpayers" might be a school district in other smaller counties such as Delaware County (I extrapolate an average school district size of about 35,000 population from Upper Darby School District at about 90,000 to Garnet Valley School District and Wallingford-Swarthmore at about 20,000, ignoring Chadds Ford and Thornbury which are part of 2 Chester County School Districts) or a municipality (from Rutledge Borough's 860 to Upper Darby's, 81,821). Or should the measure be more like "downtown Pittsburgh". Further, once you get into "subclassifications" especially of non-

residential property it may be difficult to find more than one (1) e.g. office building sale in Rutledge Borough or even Wallingford-Swarthmore School District of which it is a part. And, a school district area vs. a “neighborhood” may be a distinction without a difference if, e.g., where the County Common Level Ratio is 58.3% and the school district ratio of sales of similar properties is hypothetically 44.2%, the Township (Ignoring the two co-terminous School Districts/Township) is 43.1% and the “neighborhood” and 42.4%.

The conclusion therefore seems to be that in terms of what is permissible for a Downingtown uniformity challenge, for purposes of residential property is probably sales within a municipality or perhaps even a neighborhood of “similar homes” would be most appropriate.³ With commercial property, just as in Downingtown which looked at “strip shopping centers” throughout Chester County, it may be on a case by case basis depending in the number of “similar properties of the same nature” in the area selected.

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³ If the First and Second Wards of Pittsburgh have about 9400 is that a “safe harbor” i.e. if an appealed property is in a very small municipality do you expand the area by the “neighborhood” up to about 10,000 in population? A study of School District, Municipality and Neighborhood statistics may be appropriate.