

Philadelphia Real Estate Tax Assessments-A New Attack, Part II.

This will continue my discussion of the complaint in *Gerald S. Kaufman Corp. v. Commonwealth*, 652 MD 2012 (Pa. Commw.). As I discussed in my initial post, the case is an attack on legislation that was put in place when City Council deferred the implementation of the Actual Value Initiative; the General Assembly and the council both passed laws that direct that 2013 property taxes be calculated by applying Philadelphia's predetermined ratio to 2011 values to determine real estate taxes. The plaintiffs note that the 2012 common level ratio for Philadelphia was significantly lower and posit that their right to uniformity in taxation is therefore violated because they will not be able to invoke the common level ratio if they file an appeal. It is an interesting case that raises serious issues, but I am not sure that it will be a winner.

One problem that I see is that application of the common level ratio is not necessarily going to result in uniform taxation in situations where the relevant values of the properties have been appreciating at different rates because applying an average does not address the prospect that some properties will be over-assessed and others will be under-assessed. The Supreme Court of Pennsylvania recognized this point in *Clifton v. Allegheny County*, 969 A.2d 1197 (Pa. 2009), noting that "applying the same ratio to an outdated base year 'actual' value, where the current actual value of a substantial number of properties has changed dramatically, creates the same disparity in effect as applying a different ratio to current actual values." *Id.* at 1227 (citation omitted). Indeed, in *Clifton*, the court explicitly rejected the idea that application of the common level ratio was a panacea that would cure a lack of uniformity. *Id.*

There is a recognized statistic that is used to describe how much individual property values may vary from the common level ratio: it is known as the co-efficient of dispersion, and it measures the degree to which the ratio of assessed value to market value for individual properties deviates from the common level ration. Relevant professional standards suggest that the co-efficient of dispersion for an older, heterogeneous area such as Philadelphia should be 15% at most. Reports that have surfaced as part of the tax reform debate in Philadelphia have suggested that the co-efficient of dispersion was over 64% based on 2008 data. If true, this suggests that a substantial number of properties are assessed at 164% of market value, while another large block of properties are assessed at 46% of value. This is worse than the disparity that was addressed in *Clifton*: Allegheny County had a co-efficient of dispersion of 30.2%.

The remedy in *Clifton* was not to apply the common level ratio; instead the Supreme Court concluded that the right approach was to have a county-wide reassessment. This, of course, is what the Actual Value Initiative was designed to do.

So why can implementation be put off for a year? If we look at the *Clifton* case as an indication of how the Supreme Court views the process of fixing a broken real estate tax assessment system, it suggests that the Court is willing to be fairly patient. *Clifton* was a challenge to the system Allegheny County had planned to use for 2006; in ruling on an appeal in 2009, the Supreme Court acknowledged that Allegheny County had a "broken system of property taxation" and remanded the case to the trial court to set a "realistic timeframe" for completion of a county-wide reassessment. 969 A.2d at 1231.

Since application of the common level ratio is not likely to assure uniformity, and since the General Assembly and City Council have proposed a specific time table for fixing the problem

with Philadelphia's assessment system, my guess is that the *Kaufman* plaintiffs don't get the relief they seek in their complaint.

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