

Philadelphia Taxpayers Win Challenge to City's Discriminatory Tax Assessments of Commercial Properties

Real Estate Alert | July 18, 2019

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As discussed in our article almost two years ago, the City of Philadelphia was likely to find itself in an uphill battle against commercial property owners following the Pennsylvania Supreme Court decision in *Valley Forge Towers Apartments N, LP, et al. v. Upper Merion Area School District*. The basic holding of *Valley Forge Towers* was a prohibition against discriminatory assessment practices that favored one class of property owners (often residential properties) over another (usually commercial or industrial properties).

On July 17, 2019, Judge Gene D. Cohen of the Philadelphia Court of Common Pleas entered an Order striking the City's 2018 assessments as violating Pennsylvania's Uniformity Clause because the City discriminated against nonresidential properties (i.e. commercial properties). In his decision, Judge Cohen made the following relevant findings:

- Ample evidence was presented showing City Council exerted political pressure on the Office of Property Assessment (OPA) to target commercial properties for reassessment to raise revenue
- Seemingly due to political pressures, the OPA's reassessments for tax year 2018 focused on non-residential property while only reassessing 1% of residential properties
- Effectively "[t]he City conducted only a commercial reassessment for Tax Year 2018"
- As a result of the City's "selective reassessment of commercial properties" it raised "more than \$118 million in additional taxes"
- As a defense, the City relied on ratio studies comparing its assessments to recent sales to try to show a fair system of assessments; however, the City excluded 60% of the relevant sales from its study – of the approximately 79,000 arms-length residential sales during the relevant time period, the City only included 31,000 in its study
- The discriminatory treatment of certain taxpayers is not justified by the City's desire to raise additional revenue and, as in *Valley Forge Towers*, "[a] taxing authority is not permitted to treat one sub-classification of properties differently from another."

Based on the clear discriminatory treatment of commercial properties, Judge Cohen ordered the City's 2018 reassessments for the plaintiffs' properties to be stricken and directed the City to issue refunds, plus interest, for the overpayment of taxes.

It is estimated that the plaintiffs in this case made up approximately \$63 million of the \$118 million tax increase for 2018. That means Philadelphia's commercial properties are still over-assessed by \$55 million for tax year 2018. During the trial Judge Cohen had questioned whether striking the 2018 assessments should apply to other commercial property



owners; however, his decision only addressed the properties owned by the plaintiffs and did not extend to other commercial properties. This leaves open the possibility other commercial property owners may still seek relief for their 2018 assessments following his decision.

If you have questions or would like additional information on specific points regarding real estate tax assessment appeals, please contact James Vandermark (vandermarkj@whiteandwilliams.com; 215.864.6857) or Kevin Koscil (koscilk@whiteandwilliams.com; 215.864.6827).

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