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The Pennsylvania Supreme Court Rules That Taxing Authorities May Not Selectively Appeal Property Assessments

by Jonathan M. Grosser and Adriel J. Garcia

In early July, the Pennsylvania Supreme Court unanimously ruled in Valley Forge Towers Apartments v. Upper Merion School District (at <http://www.pacourts.us/assets/opinions/Supreme/out/J-14-2017mo%20-%2010315970920113108.pdf?cb=1>), No. 49 MAP 2016 (Pa. July 5, 2017), that taxing authorities may not selectively appeal property assessments of commercial properties while intentionally choosing not to appeal the assessments of residential properties. This groundbreaking decision has immediate statewide consequences, as it prohibits the long-standing and widespread practice of assessment appeals brought exclusively against commercial properties in order to enhance tax revenue.

The implications of this decision are rooted in the basics of real estate taxation. Real estate taxes payable by a property owner are typically based on the parcel's assessed value. However, because a parcel can go years without a reassessment, a parcel's assessed value can be significantly less than its actual fair market value. This leads taxing authorities (such as counties, municipalities and school districts) to appeal the assessments of some of the parcels within their boundaries in order to bring the parcel's assessed value closer to its actual fair market value, resulting in greater tax revenue. However, in doing so, these taxing authorities often exclusively target commercial properties because these properties' values are generally

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Philadelphia's Planning and Development Agencies Finally Under One Roof

by Christopher W. Rosenbleeth and Adriel J. Garcia

Following a reorganization process that began almost two years ago, most of Philadelphia's distinct housing, development and planning agencies have finally been officially united under a single city department known as the Department of Planning and Development (DPD).

The process began in late 2015, when voters approved a measure to amend the Philadelphia Home Rule Charter and create a new entity to oversee the city's planning, zoning and development services and manage the city's housing and community development functions. Before the amendment, there were at least 10 city offices and agencies that regulated, approved or were otherwise involved in city planning and development. However, these offices and agencies were not connected or accountable to each other, which created a confusing and often frustrating environment for those who wanted to develop real estate in the city.

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The Pennsylvania Supreme Court Rules That Taxing Authorities May Not Selectively Appeal Property Assessments *(continued from page 1)*

higher than those of single-family homes and hence, raising their assessments would result in a greater tax revenue increase than doing the same with underassessed single-family homes.

In Valley Forge, commercial taxpayers challenged this practice, arguing that the practice of discriminating against commercial properties by systematically appealing the assessments of only those properties violates the Uniformity Clause of the Pennsylvania Constitution, which states:

All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Pa. Const. art. VIII, § 1.

Finding that the taxpayers' claims failed as a matter of law, the Pennsylvania Court of Common Pleas sustained preliminary objections and dismissed the complaint, and the Commonwealth Court affirmed. Relying on the Pennsylvania Supreme Court's decision in Downingtown Area School District v. Chester County Board of Assessment Appeals (at <http://www.pacourts.us/assets/opinions/Supreme/out/J-139-2006mo.pdf?cb=1>), 913 A.2d 194 (Pa. 2006), and consistent with previous Commonwealth Court decisions, the Commonwealth Court held that taxing authorities could distinguish between subclasses of properties (such as commercial properties, residential properties, etc.) and treat them differently for taxation purposes so long as the differential treatment was rationally related to a legitimate government interest. According to the Commonwealth Court, this so-called rational basis test was satisfied because the taxing authority's purpose for exclusively targeting commercial properties was to increase tax revenues sufficiently to justify the costs of the tax assessment appeals.

However, on appeal, the Pennsylvania Supreme Court reversed, and in so doing, upended Pennsylvania case law by noting that the Commonwealth Court had misunderstood and consistently misapplied its holding in Downingtown over the past 10 years. According to the Supreme Court, the primary issue in Downingtown was whether a taxpayer could prove a violation of the Uniformity Clause by showing that his property is overassessed as compared with other, comparable properties. The Downingtown Court held that taxpayers could make such a showing without having to include all types of properties in their analysis, allowing taxpayers to differentiate between commercial properties and residential properties.

But the Supreme Court stressed that the Downingtown Court



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“never suggested that the *government* could divide the realty within a taxing district into multiple sub-classifications.” To the contrary, as the Supreme Court remarked:

[L]ong before the decision in Downingtown was announced, it was an established feature of Pennsylvania uniformity jurisprudence that ‘all real estate is a constitutionally designated class entitled to uniform treatment and the ratio of assessed value to market value adopted by the taxing authority must be applied equally and uniformly to all real estate within the taxing authority’s jurisdiction.’

According to the Supreme Court, taxpayers are entitled to differentiate between commercial and residential properties in order to “maintain the longstanding protection of taxpayers from high assessment ratios as compared with those of comparable properties,” but taxing authorities are not entitled to use these subclasses to “systematically engage in disparate treatment.” Instead, for taxation purposes, all property in a taxing district is a single class, and the Uniformity Clause does not permit taxing authorities to intentionally or systematically treat different property types in a disparate manner. The Supreme Court therefore concluded that taxing authorities are not permitted to selectively and systematically appeal the assessments of commercial properties but not residential properties.

Although it is still too early to determine the total impact of the Supreme Court's decision, Valley Forge is significant because it indicates a radical departure from long-standing Pennsylvania case law by holding that taxing authorities cannot intentionally treat properties differently based on property type. In so holding, Valley Forge undermines the widespread practice of assessment appeals brought exclusively against commercial properties, which should have an immediate impact on the ability of commercial properties to successfully challenge the practice.

Philadelphia's Planning and Development Agencies Finally Under One Roof *(continued from page 1)*

The new amendment, which went into effect on July 1, merged five of these agencies — the City Planning Commission, the Historical Commission, the Art Commission, the Developer Services Program and the Division of Housing and Community Development — into one department, the DPD. Clerical and administrative support for the Zoning Board of Adjustment will also be housed within the DPD, and the DPD will collaborate closely with three non-city agencies: the Philadelphia Redevelopment Authority, the Philadelphia Housing Development Corporation and the Philadelphia Land Bank.

All of these offices and agencies are now answerable to the DPD, which consists of three distinct divisions with separate functions:

1. The **Division of Planning and Zoning** will oversee and provide administrative support to the City Planning Commission, the Historical Commission, the Art Commission and the Zoning Board of Adjustment.
2. The **Division of Development Services** will function as the customer service arm of the DPD and provide coordination services for development projects by:
 - (a) Coordinating work among offices, departments, boards and commissions with respect to development projects;
 - (b) Coordinating with non-city governmental and government-related entities to promote cooperation with city agencies regarding review of, and support for, development projects;
 - (c) Establishing procedures for consideration and review of development projects by city and non-city agencies; and
 - (d) Coordinating interactions with the relevant community group(s) and stakeholders as needed, including establishing a point of contact for citizens to discuss active projects.
3. The **Division of Housing and Community Development** will be responsible for:
 - (a) Developing housing and community development policies and programs;
 - (b) Regularly developing a multiyear strategic housing plan for the city that includes recommendations for maintaining and increasing affordable housing, workforce housing and market-rate housing;
 - (c) Preparing all documents and taking any other actions necessary to enable the city to receive any available



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public and private funds dedicated to housing and community development programs and activities;

- (d) Administering all city housing and community development programs and activities, and overseeing the expenditure of all public and private funds received by or appropriated by the city for such programs and activities;
- (e) Convening and providing administrative support to the Housing Advisory Board; and
- (f) Convening representatives of non-city public agencies involved in housing and community development activities, including the Philadelphia Housing Authority, the Philadelphia Redevelopment Authority, the Philadelphia Housing Development Corporation and the Philadelphia Land Bank, in order to facilitate coordination between the city and such agencies.

The director of Planning and Development will serve as the head of the DPD. He or she will be appointed by the mayor and will report directly to the mayor as a member of the mayor's Cabinet, adding another layer of accountability to the process.

Although the DPD was officially created on July 1, the DPD has been operating as the Office of Planning and Development (OPD) since Jan. 4, 2016. In the intermediate period, the OPD has achieved a number of accomplishments, including successfully developing a plan to relocate the public safety agencies into one central location within the next few years. Going forward, the DPD will also focus on developing a comprehensive housing plan for the city. We expect that the centralization of the city's planning and development agencies will help streamline government administration, facilitate efficiency and enable each agency to work closely with partner agencies to further growth and development efforts in Philadelphia.

Radnor Property Group Sells University City Apartment Tower for \$118 million

Stradley Ronon represented Radnor Property Group in the sale of 3737 Chestnut, a 26-story luxury apartment tower, to Korman Residential Properties and The Carlyle Group. Stradley Ronon attorneys advised Radnor in connection with negotiating the sale agreement with the purchasers, satisfying due diligence and ultimately, closing on the disposition. The fully-leased tower is a trophy building in the University City submarket. Radnor Property Group, a leading real estate development company specializing in mixed-use commercial, multi-family and student housing, will now turn its attention to two other projects: Vue32, also in University City, and the Hamilton, a multi-phase residential project in Logan Square.

The Stradley Ronon team was comprised of Real Estate partners Linda Galante, Chris Cummings and Chris Rosenbleeth; Tax partner Zachary Alexander; and associates Caroline Gorman and Tyler Mullen. In connection with this project, our attorneys also advised Radnor Property Group in negotiating the long-term ground lease for the site, construction and other professionals’

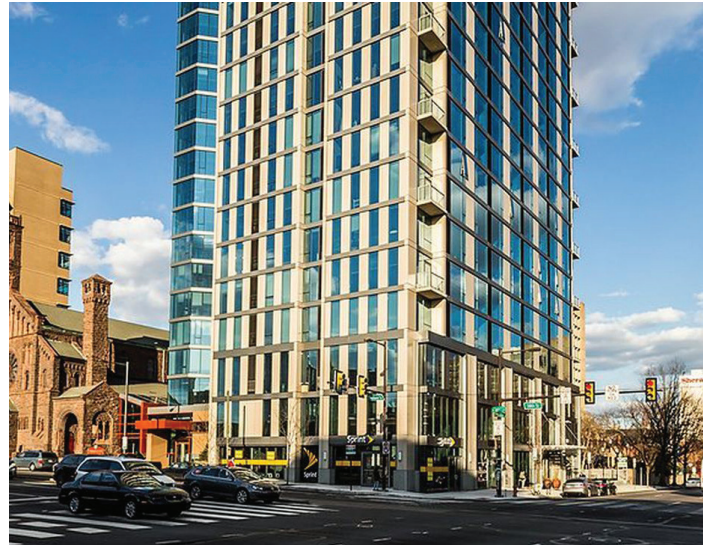


Photo obtained from <https://philly.curbed.com/2017/7/12/15960242/3737-chestnut-sold-university-city-philadelphia>.

contracts, construction financing and a private equity investment, commercial leasing and permanent financing upon completion of the project. We congratulate our client, Radnor Property Group, and are honored to have assisted them in this success!

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