

Commonwealth Court Decisions Allow Taxing Bodies Discretion In Determining Standards For Tax Assessment Appeals

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Punxsutawney Area School District v. Broadwing Timber, LLC, 1209 C.D. 2018 (Pa. Commw. Ct., October 29, 2019)

Since the Pennsylvania Supreme Court's recent decision in *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District*, 163 A.3d 962 (Pa. 2017) taxing bodies and taxpayers have been litigating the permissible standards for taxing bodies to file assessment appeals. Based on a recent decision from Commonwealth Court, however, taxing bodies will have broader discretion in determining such standards unless they purposely focus on only commercial properties.

Background and Discussion

In *Punxsutawney Area School District v. Broadwing Timber, LLC* ("Broadwing"), the owner appealed from a Court of Common Pleas of Jefferson County order directing the reassessment of the owner's multiple properties. At the time of the District's assessment appeals, the properties' combined assessed value was \$218,620. The Jefferson County Board of Assessment Appeals denied the District's assessment increase request, and the District appealed to court.

In the trial court proceedings, both sides presented and documentary evidence; the District also presented testimony of an appraiser and the owner had its director of real estate testify. What produced controversy at trial, though, was the testimony of the District business administrator as to how its appeals were determined. After receiving monthly checks from the County reflecting the District's portion of realty transfer taxes, the District's business administrator reviewed the transfer tax payments, noting larger payments (which would correspond with the sales prices of the properties). The business administrator testified that with the properties at issue in the suit, as with other properties, she did not inquire into the zoning, ownership or type of properties involved, but merely the amount of revenue the realty transfer tax generated. She would compare the transfer tax with the current assessment, and considering an amalgamation of taxes what a successful tax assessment appeal centered on the purchase would bring in the form of increased real estate taxes. The business administrator then would confer with the superintendent and solicitor, determine whether the potential tax increase would outweigh the costs of suit. If the analysis was favorable, the appeals were presented to the school board for approval.

The business administrator conceded the District had no written policy establishing when it would pursue an assessment appeal, and had no specific monetary threshold. The administrator testified that while no appeal against a residential property had ever been recommended, there were a few properties that if sold could likely be the subject of an appeal. Further the school board had granted the District administration discretion in filing appeals but that in practice, specific approval from the school board had always been sought.

In deciding the case, the Court of Common Pleas held that the District's practice for deciding what properties to appeal did not violate the state's Uniformity Clause on taxation. The Common Pleas court explained that the *Valley Forge* case clarified that a taxing body was not permitted to implement a program of appealing only the assessments of one-sub classification of properties where that sub-classification is drawn according to property type (e.g., commercial, industrial, residential). But the trial court also cited *Valley Forge's* statement that the use of a monetary threshold or some other selection criteria would not violate uniformity if it were implemented without regard to the type of property. Accordingly, Common Pleas Court concluded the District's practice did not run afoul of *Valley Forge*. The Court recognized that the

District looked only at property sales prices and that because of the rural and less affluent nature of the District, this process resulted in appeals only against commercial properties. But this “numbers-only” process did not discriminate against any particular group of properties. Further the District’s position was bolstered by the fact that two properties were not appealed, because despite the real estate transfer tax involved, the potential revenue increase would not justify a tax appeal. Therefore, the owner did not present a sustainable challenge based on *Valley Forge*. Further as the taxpayer did not challenge the credible evidence of the District’s appraiser, Common Pleas Court adopted the District appraiser’s \$3.4 million valuation of the property.

On appeal before Commonwealth Court, Broadwing argued the District’s practice created two unlawful classifications for tax purposes: appeals were filed only against those properties that recently sold, and only against appeals of commercial or commercially-used properties. Further, the District’s policy (or lack of a formal policy) — as reflected in the practice by the business administrator — without any set criteria or established monetary threshold was arbitrary, and the District’s unstructured process was insufficient to support the District’s arguments that its practice complied with the uniformity clause. In addition, even if there was no direction that appeals be filed only against commercial properties, the de facto effect of District’s practice created an impermissible sub-class of properties. The owner also claimed that the District’s reliance on *Valley Forge*’s approval of a neutral selection criteria was misplaced because no set monetary threshold or other selection criteria had been implemented. As there is was no established policy, the District’s ad hoc behavior was not justified.

In response, the District claimed its consistent, systematic review and selection of properties was consistent with *Valley Forge* and its appeals were based only on a financial analysis and not as to the properties’ type or ownership. The District’s selection of properties was also consistent with its right to appeal assessments generally under Section 8855 of the Consolidated County Assessment Law.

In reviewing the case, Commonwealth Court reiterated that the Uniformity Clause of the state constitution provides that all taxes shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax. The Court also cited the ability of taxing bodies to file appeals under the Consolidated County Assessment Law, but noted that such discretionary power must be done within “constitutional boundaries.” Citing *Valley Forge*, the Court analyzed Broadwing’s primary argument that the District practice violated the Uniformity Clause because the District has no formal or written policy establishing specific criteria or a specific monetary threshold. But after reviewing *Valley Forge*, Commonwealth Court held that the District’s practice, while not formally memorialized, did not violate the Uniformity Clause.

The Court did not read *Valley Forge* as requiring a formal or written policy, but only that other selection criteria be implemented without regard to the type of property in question or the residency status of its owner. Lack of such formal or written policy did not warrant reversal.

Commonwealth Court also rejected the argument that the District’s practice was without any criteria and was arbitrary because the credible evidence of that practice established otherwise. The Court further found the business administrator credibly testified regarding the financial analysis she performed in order to decide what properties in any given month she would present to the District superintendent as possibly under-assessed properties. This initial analysis by the administrator would cause a second financial analysis by the administrator who calculated the potential increase in revenue that could result from the reassessment of the property, which in turn would yield a third financial analysis performed by the business administrator, superintendent and the solicitor to determine whether the increase in tax revenue outweighed the cost of filing an assessment appeal for the property. The business administrator testified these analyses were never about the type of property and the Court affirmed that this testimony was credible.

Further, the Court found that although the District did not rely on a specific monetary threshold, as used in other cases (such as *East Stroudsburg Area School District v. Meadow Lake Plaza, LLC*, cited below), the District through its business administrator, solicitor and superintendent looked at the potential increase in tax revenue of a successful assessment and

whether such would outweigh the likely cost of an appeal. The difference in this practice from other cases was that instead of basing its decision on average cost of appeals, the District performed a property-by-property analysis to determine if and appeal makes financial sense. But more important this analysis was implemented without consideration of a property owner's type or owner. Accordingly, the District's practice was not arbitrary, but rationally based on a financial analysis implemented without regard to a property's type or ownership.

The Court also rejected Broadwing's assertion that an unconstitutional sub-classification was created based on the fact that the District's practice had resulted in only commercial or commercially used properties being appealed. The Court noted that the District's practice thus far has resulted in these limited appeals but no sale of residential properties had occurred to produce a high enough realty transfer tax to warrant review. Yet if such a residential sale did occur, the District's established process would be used to whether that property's assessment should be appealed. The Court said its result was consistent with such recent cases such as *East Stroudsburg Area School District v. Meadow Lake Plaza*, where the Court rejected the taxpayer's argument that even if a monetary appeal threshold was facially neutral (there the threshold was \$10,000 in additional revenue), it resulted in the appeal of only commercial properties.

Conclusion

Absent further successful appeals to the state Supreme Court, it would appear that Commonwealth Court, in interpreting *Valley Forge*, has set forth the following guidance:

- Tax assessment appeals based on a variety of factors or a consistent monetary threshold are proper as long as such are applied to both residential and commercial properties.
- Exceptions to such standards can be made if pursuit of an appeal would not be cost-effective.
- Policies reflecting tax appeal programs can be in the form of a practice or a general authorization by a school board, and do not necessarily have to be through a fully-enacted school district policy

Accordingly, if assessment appeal programs are set on general criteria for which exceptions can be made based on the specific facts of a property, such programs will be upheld. The Supreme Court, though, may undertake these cases and will have the final word on this.

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