

Recent Developments Regarding Allegheny County Property Tax Appeals

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By the time you are reading this, the new window for 2013 property tax appeals will have closed on April first. However, the resolution by Allegheny County Council opening 2013 appeals again in March was not the only significant development in the ongoing property tax saga.

First, the class action filed against the county and Board of Property Assessment Appeals and Review, (BPAAR), *Burton et al. v. Allegheny County*, at GD13-000551, is continuing. In late February, BPAAR filed preliminary objections challenging the plaintiffs' ability to proceed with the case. BPAAR argued that the case could not proceed without the joinder of 43 school districts and 130 municipalities which would be affected by any adjustment of assessments. Those taxing bodies, as well as the county, would have to refund some of the taxes collected this year on the properties which are the subject of the lawsuit, if the court rules that the assessments must be reduced.

BPAAR's preliminary objections also allege that the plaintiffs state no claim for relief, since the board is required under its rules to consider and "give weight to" but not adopt the value provided by a single appraiser, and the board is not required to give the detailed explanations of its findings requested by the plaintiffs. BPAAR's last preliminary objection argues that the plaintiffs came to court too early, before they exhausted their administrative remedies by appealing the BPAAR decisions to the Board of Viewers.

The preliminary objections were joined in by the county, and the plaintiffs have filed their responses to the objections. The parties are awaiting argument in front of Judge Wettick on the issues above, which argument will determine the next steps in the case.

As for the new 2013 property tax appeals recently filed following the county council resolution, the resolution raises a series of procedural issues. First, the municipalities set their tax rates based on all 2013 appeals having been

filed, and all filed appeals having been decided by December 31 at the BPAAR level, as directed by the court.

Allowing new appeals undermines the court's plan to make Allegheny County real estate tax appeals prospective rather than retrospective, as is already the process in most other counties. The retrospective appeal process means that taxing bodies have very little comfort that the millages they set will bring in the anticipated revenue. Every property being appealed may have to pay lower than anticipated taxes, lowering the revenue to the taxing bodies and forcing them into deficit spending. Allowing new appeals at the BPAAR level while existing appeals are pending at the BPAAR level would give two bites of the apple to taxpayers, slow the process, and waste the time and money allocated to the first appeal. Worse, the current procedure is that once an appeal is taken to the BOV, that body has exclusive jurisdiction to hear all questions as to the value of that property for the year in question and all subsequent years which are assessed during the time the property is awaiting disposition by the BOV. The new resolution allows BPAAR filings while BOV appeals are pending, but does not address the jurisdiction issue. The new resolution also suggests that a property owner can withdraw a BOV appeal if he or she files a new BPAAR appeal for the 2013 year, has a BPAAR hearing, and is happy with the result of that hearing. However, BOV rules require the agreement of all parties to withdraw a pending appeal. That means the municipality, school district and county would all have to agree to accept the second BPAAR result and withdraw the pending BOV appeal. If the owner gets a better result the second time before the BPAAR, I find it unlikely that the municipality and school districts will waive their right to a BOV conciliation and hearing.

For these reasons, we have advised clients who missed the opportunity to appeal 2013 tax assessments, either because they bought properties after April 1, 2012, or because they did not get notice of their reassessments until after the deadline, and those who missed BPAAR hearings because they did not get notice of the hearing date, to use the new window and file 2013 appeals by April 1, 2013. However, we have told those who filed appeals, attended hearings and obtained BPAAR decisions, and especially those who have appeals pending at the BOV, that they are unlikely to get a second bite at the apple in front of BPAAR.

All property owners will get the chance to appeal 2014 assessments. Those appeal forms are not yet out, and it is likely we won't see them for several

months. Hopefully the 2014 appeals will be decided before the end of this year, giving property owners, tax escrow companies and taxing bodies the opportunity to plan for their taxes ahead of time.

On March 14th, BPAAR added one more wrinkle to the tax appeal process this year. It changed its rules on who can appear and represent a taxpayer in front of BPAAR. Previously, appraisers and other paid consultants could handle property tax appeals in front of BPAAR, and attorneys were the only ones allowed to represent taxpayers who did not represent themselves at the BOV level.

As of April 20th, the only paid representatives who can appear for taxpayers at the BPAAR level are attorneys at law. Taxpayers as always can appear themselves, certified property managers can appear for the owners of properties which they manage, employees of the owner can appear, and non-compensated third parties, such as a brother in law, can also appear for taxpayers.

If you have pending appeals with an appraiser or paid tax consultant who is not an attorney representing you and the hearings are not held by April 19th, you will have to make different arrangements to handle your appeal. BPAAR hearings are still being scheduled, but if you don't get a hearing notice by April 10th, put your backup plan in place, since notice is required 10 days before a hearing.

Keep watching this newsletter for continuing updates on Allegheny County Property Tax Appeals.

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