

Is Assessment 2005 Going to be Reform or Allegheny County's Version of "Ground Hog Day?"

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

Article VIII, Uniformity of Taxation, Section 1, Pennsylvania Constitution

I want to thank Council for allowing me to address you this evening; I just have two points to make, and some questions for you to think about before you vote.

First, the sliding cap is non-uniform and thus unconstitutional.

Second, what is happening is a recurrent nightmare for a public that is more than tired of the politics of shirking and blame than you might imagine. When 40% of Pittsburgh residents want to move out of the City because it's going in the wrong direction, I wonder what county residents would say in reaction to the periodic circus of Allegheny County's failed real estate assessment "system."

The Uniformity Issue

Council has earlier adopted an assessment standard of 100% of market value which means that upon reassessment, the assessed value of each property should be at 100% of market value. In view of the fact that county millage is set at a single rate, the resulting real estate tax bill satisfies the

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uniformity clause of the Pennsylvania constitution. If you limit the amount of growth in assessed values according to a sliding formula, you violate the uniformity clause of the constitution because the resulting county real estate taxes will not be uniform in effect.²

If assessed values truly grew by 19%, and you instead lower the assessment standard from 100% to 81%, and do not embrace the proposed sliding limitations on assessment increases (or decreases), then the resulting real estate tax bills would be uniform and would withstand a uniformity challenge.

If the new assessments are not as good as claimed by your employee, the Chief Assessor, and in fact remain systematically erroneous, then there could be challenges under Article VIII, Section 1 of the Pa. Constitution.

For example, if African American homeowners are systematically over-assessed, they could seek redress on the basis of non-uniformity under the Pennsylvania Constitution. They might also seek redress under federal civil rights statutes as happened in Nassau County, New York. There may be other, older sources of federal protection as well.³

If you believe that your ordinance will survive a uniformity challenge, good luck!

If not but you like the sliding cap, I suggest you go to Harrisburg to argue that the General Assembly should amend the Pennsylvania Constitution.

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What's happening this Spring is precisely what has happened in prior years in this and the previous two centuries in Allegheny County.

It's like the 1993 Bill-Murray movie "Ground Hog Day". If you haven't seen it, go rent it at Blockbuster's. Recall the movie's plot:

A cynical out of town weatherman is forced to continuously re-live the worst day of his life until he learns to become a better person.⁴ This is his fourth year covering the story of Punxsutawney Phil, and he makes no effort to hide his frustration. On awaking the 'following' day he discovers that it's Groundhog Day again, and again, and again. First he uses this to his advantage, then comes the realization that he is doomed to spend the rest of eternity in the same place, seeing the same people do the same thing EVERY day.

² Irrespective of the rationale, the sliding cap on assessments means that properties will be not be each assessed at a single assessment percentage (100%), and thus the taxes will vary and thus be non-uniform.

³ See Robert P. Strauss and David A. Strauss, "Residential Real Estate Assessment Fairness in Four Urban Areas," *Proceedings, 96th Annual Conference, 2003*(Chicago, Illinois),298-305 or www.andrew.cmu.edu/user/rs9f/nta_2003_3_8_04_corrected-endnotes.pdf and *Coleman v. Seldin* (O'Shea), Sup. Ct. Nassau Co., 97-030380, Stipulation 31600. (March 29, 2000).

⁴Perhaps the weatherman is the County Executive and Council; my hope is that finding truth will entail your simply certifying the new assessments rather than also trying to "cap" them and having a judge force you to do that in the end.

So, are you and the County Executive awakening like Bill Murray again in the Spring, just like you did under the previous administration, like previous county commissioners did, both Republican and Democrats to face up to another assessment nightmare? And each time you search for the magic obfuscation, deception, half-truths, and a frantic search to find somebody else to blame?

Or maybe you and the County Executive are really like Punxsutawney Phil. You stick your nose up to see if it's safe to put out good assessment numbers, you see all the people, TV cameras, and reporters. It's too frightening to do, so you disappear down the hole again for another couple of years figuring if you "cap it" everybody will go home and leave you alone to do what county elected officials do in their comfortable cavern.

Finally, somebody sticks the microphone down into the hole and says to the judge who's down there as well, 'Isn't Phil required by law to get the numbers out there without some sort of 1,2,3,4 hanky-panky?'

The judge says, "By golly, you're right. Now that I think of it, we have a Constitution and case law that says he's supposed to put out good numbers that are based on a uniform assessments and if the assessed base goes up, the millage has to be reduced. They taught us about this sort of thing in law school, and I took an oath of office to enforce the law when I decide cases. Thanks for reminding me."

Finally, the judge chases Phil out into the sunshine with some good assessment numbers to give to the public. Then Phil, the groundhog, says to the reporters on statewide TV, blushing and pleased with all the publicity, "Don't blame me for the numbers, the judge made me do it. See you !" And Phil disappears down the Pennsylvania turnpike.

But then the day is over, and the same thing happens over again tomorrow. It's February, and the reporters and TV camera crews start arriving around the groundhog's hole. The groundhog realizes he's supposed to stick his nose out of the hold with a bunch of numbers. He forgets what happened yesterday, and the judge forgets as well.

It's great! Nothing ever changes in Pennsylvania except people keep leaving.

Obviously my advice is to find salvation and certify the assessments as computed by CLT and then make sure that the communities roll back the millage. Most did, most will.

A Few Questions

1. Does it appear to you that your plan clearly violates uniformity provisions in the state constitution?
2. Does voting for this ordinance violate your oath of office to uphold the uniformity clause of the state constitution?
3. Are you really trying to provide tax relief available under Article VIII, section 2(a)(v) of the Pennsylvania Constitution? But aren't these functions delegated by the General Assembly to other

municipalities and school districts within the county.

4. Does voting for this ordinance violate previous orders of Judge Wettick in matters relating to the assessment of real property in Allegheny County?

5. By not correcting obvious over-assessments in heavily African American parts of the County, are you not violating federal law?

6. Will you be immune to personal liability if you knowingly and or intentionally violate local, state or federal law?

7. Are you sure you have solid opinions on these matters?

8. Will you give me a CD of the new assessments, old assessments, and 3 or 4 years of ALL sales data so I can do my own sales ratio study to see how good the new assessments really are?

Thank you for the opportunity to testify; I'd be happy to answer any questions.