IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David G. Blazek and Frances R. Blazek, husband and wife	:	
v.	:	No. 16 C.D. 2010
	:	Argued: November 8, 2010
Washington County Board of Assessment Appeals, Peters Township and Peters Township School District	:	
Appeal of: Peters Township and Peters Township School District	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER,** President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER **FILED: December 22, 2010**

Peters Township and Peters Township School District (Tax Authorities) appeal from the order of the Court of Common Pleas of Washington County, sustaining the real estate tax assessment appeal of David G. and Frances R. Blazek. On appeal, this court must determine whether common pleas erred as a matter of law in concluding that Washington County's reassessment of the Blazek's lot after they purchased their newly constructed home from the developer

violated the Fourth to Eighth Class County Assessment Law (Assessment Law)[1] and the Uniformity Clause.[2]

The Blazeks own a 4,625 square foot home on a .658 acre lot located at 1012 Sheriffs Court, McMurray, Peters Township. The home was built in 2007. The lot was initially assigned a base year market value of $27,500 but that value was increased to $55,000 when the property was sold to the Blazeks, leading to a total base year market value of $388,232 (the market value of the improvements were $333,232).[3] The Blazeks appealed their base year assessment and the Board of Assessment Appeals reduced the total base year market value of the property to $363,123 (reflected on the property record card as a reduction in the market value of the improvements to $308,123). Application of the County's established predetermined ratio of .25 yielded an assessed value of $90,780. The Blazeks further appealed and a de novo hearing before common pleas followed.

Before common pleas, the County placed its assessment record into evidence and presented the testimony of Robert Neil, its Chief Assessor. Neil

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[1] Act of May 21, 1943, P.L. 571, *as amended*, 72 P.S. §§ 5453.101 – 5453.706. The assessment and taxation of real estate in Washington County is also governed by The General County Assessment Law, Act of May 22, 1933, P.L. 853, *as amended*, 72 P.S. §§ 5020-101 – 5020-602.

[2] The Uniformity Clause, found in Article VIII, Section 1 of the Pennsylvania Constitution, provides that, "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax . . . ."

[3] Pursuant to Section 602(a) of the Assessment Law, 72 P.S. § 5453.602(a), real property shall be valued for assessment purposes according to its actual value. However, in arriving at actual value, a county may use either the current market value or adopt a base year market value. Washington County uses the base year market value for assessment purposes. The base year is defined as "the year upon which real property market values are based for the most recent county-wide revision of assessment of real property or other prior year upon which the market value of all real property of the county is based." Section 102 of the Assessment Law, 72 P.S. § 5453.102. The last county-wide reassessment occurred in Washington County in 1981.

essentially testified to the initial assessment values noted above and provided testimony regarding the base year market values of several other properties which he believed were comparable to the subject property.[4]

In response to questioning by common pleas regarding the reassessment of the property following its sale to the Blazeks, Neil testified as follows:

> Historically, in the assessment office once a plan is filed, we're compelled to assign a parcel number to these lots. When that happens, it's in a development stage at best. So we value the property as to what it would be when it's completed and sold and approved, and we take half the value and assign that to the developer/builder until the property is completed.
>
> We just don't think it's fair for a developer to pay the full value when ground has to be moved and lots have to be laid out and engineering has to be done. We have to assign a parcel number by ordinance in the Recorder of Deeds. So we assign a value to the property which is a full value, but we take half and value that to the developer until the property is approved slash sold.

Blazek v. Washington County Board of Assessment Appeals, Notes of Testimony (N.T.) at 43, Reproduced Record at 56a. On redirect, the following exchange occurred:

> Q. So when the Blazeks' builder completed the property and actually sold it to them, you did increase or your

[4] Two of the three comparable properties are located on the same street as the subject property and appear to be built in 2000 and 2003. While those assessment records indicate that the initial market value of each lot was $55,000, the cards each also bear the hand written notation "$55,000 when sold." The third comparable, which appears to have been built in 2002 and is located on a different street, indicates that the lot was originally valued at $27,500 and then later doubled to $55,000. That card bears the same hand written notation.

> office increased the value of the lot from $27,500 to $55,000 once the house was erected thereon?
>
> [Neil]. That's correct.

Id. at 44, R.R. at 57a. Further questioning on the matter revealed:

> The Court: Mr. Neil, as the Chief Assessor for the County, you are telling me that all of the lots in this plan were assessed at $55,000, but you cut them in half for the developer until sold. Is that what you are saying?
>
> [Neil]: Yes . . . .
>
> . . . .
>
> The Court: I cannot tell, Mr. Neil, by this [property record] card when the development actually occurred, but the sale of this property was March 1, 2006 from the developer [ ] to the Blazeks; is that correct?
>
> [Neil]: That's correct.
>
> The Court: Is that when the assessment was placed on this record, after the March 1, 2006, deed?
>
> [Neil]: I believe so, Your Honor. I would have to check that in my records, but I believe it would be.
>
> The Court: Therefore, by your card here, then the appeal was filed on June 14, 2006 . . . .
>
> [Neil]: That's correct.
>
> . . . .
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> [Recross-examination by Blazeks' counsel]: The same issue Mr. Neil. The assessment of $27,500, that was there at the time of the subdivision, would that have stayed there ad infinitum if no house had been built on it?
>
> A. Yes.
>
> The Court: There would have been no change until the property was sold. Is that what you are telling us?
>
> [Neil]: That's correct.

The Court: So that the developer gets a break?

[Neil]: That's correct.

Id. at 48-49, 50-51, R.R. at 61-62a, 63-64a. Neil reiterated on cross-examination that the 1981 value of the Blazek lot and each of the three comparables was $55,000 and confirmed for the court that that market value was assigned to the parcels following subdivision of the property but that the County did not actually assess based on that value until the developer sold each property.

In response to the County's evidence, the Blazeks presented the testimony of Alvin Barone, a residential real estate appraiser. Barone performed a comparable sales analysis for both the house and the lot. In doing so, he used home and lot sales from 1980 and adjusted the values according to their differences from the subject property. Based upon his analysis, he opined that the property had a total base year market value of $245,000 while the lot had a market value of $27,500.[5]

While common pleas opined that the County's assessment record established a prima facie case, it reduced the assessment based upon: (1) the conclusion that the County lacked statutory authority to reassess the Blazeks' lot because the reassessment did not occur in connection with a subdivision; and (2) the finding that Barone credibly and persuasively testified that the lot had a 1981 base year market value of $27,500. Based thereon, as well as Barone's testimony

[5] Common pleas's opinion states that Barone opined that the property had a market value of between $233,400 and $266,500. While this discrepancy has no bearing on our resolution of the appeal, it appears that while Barone did give an opinion regarding the value ranged cited by common pleas, he later clarified his testimony to indicate that he meant to state a value of $245,000.

regarding the total market value of property, common pleas determined that the Blazek property had a 1981 total base year market value of $299,500, attributable to $272,000 in improvements and $27,500 to the land. The instant appeal followed.

On appeal, the Tax Authorities contend that common pleas erred in concluding that the reassessment of the Blazek lot violated the Assessment Law and Uniformity Clause. According to the Tax Authorities, the Assessment Law, as interpreted by this court in *Kraushaar v. Wayne County Board of Assessment*, 603 A.2d 264 (Pa. Cmwlth. 1992), permits the County "to reassess all of the lots in the development when one or more lots [are] sold from the larger subdivided property. In fact, had the [C]ounty not reassessed each of the lots in the development it would have violated the uniformity requirement of Article 8, Section 1 of the Pennsylvania Constitution." *See* Appellants' Brief at 7-8. The Tax Authorities also suggest that the increased assessments were proper under the statutory scheme because they occurred when the property was "subdivided and sold." *Id.* at 8. Finally, the Tax Authorities contend that common pleas's finding regarding the market value of each lot is unsupported by the record.

This court has noted that once property has been valued for assessment purposes, that value cannot be changed absent one of the following circumstances: (1) the undertaking of a countywide reassessment; (2) an assessment appeal by either the property owner or the taxing authority; (3) the need to correct a mathematical or clerical error; (4) or the presence of one of the conditions set forth in Section 602.1 of the Assessment Law, added by the act of January 18, 1952, P.L. (1951) 2138, *as amended*, 72 P.S. § 5453.602a. *In re Young*, 911 A.2d 605 (Pa. Cmwlth. 2006). Section 602.1, which is relevant here, provides that the assessed valuation of real property may be changed when:

> (i) a parcel of land is divided and conveyed away in smaller parcels, or (ii) when the economy of the county or any portion thereof has depreciated or appreciated to such extent that real estate values generally in that area are affected, and (iii) when improvements are made to real property or existing improvements are removed from real property or are destroyed. . . . .

Absent one of the aforesaid circumstances, a taxing authority's reassessment of property will constitute an impermissible spot reassessment. *Id.*[6]

Here, relying on *Kraushaar*, the Taxing Authorities contend that Section 602.1(i) permits the County to double a lot's value when the developer sells that particular lot to a purchaser. In making this argument, the Taxing Authorities also suggest that the increased assessments occurred in connection with a subdivision and sale of property. These arguments appear to lack any merit. The language of Section 602.1(i) is clear; subsection (i) applies when property is subdivided and conveyed away in smaller parcels. This provision has been interpreted to require that all lots in a subdivision be assessed following the initial sale of one of the lots in the plan, not upon the individual sale of each lot by the developer.

In *Kraushaar*, the developers subdivided a large parcel of property into 27 separate lots for a proposed residential development. One of the lots was sold after the subdivision plan had been recorded. Six lots were located on a cul-

[6] Unlike the Act commonly referred to as the "Second Class A and Third Class County Assessment Law," which defines a "spot reassessment" as "[t]he reassessment of a property or properties that is not conducted as part of a countywide revised reassessment and which creates, sustains or increases disproportionality among properties' assessed values," *see* Act of June 26, 1931, P.L. 1379, § 1.1, added by the Act of December 13, 1982, P.L. 1165, *as amended*, 72 P.S. § 5342.1, the Assessment Law does not define "spot reassessment." However, that term as defined appears to be used to generally describe any non-countywide reassessment that is not authorized by statute.

de-sac, which was paved. Following subdivision and construction of improvements, the board of property assessment increased the assessed value of the remaining 26 lots, which had previously been assessed as one single parcel. Specifically, the assessment increased from $18,000 to $147,000, which was the aggregate of the assessments placed on each of the 26 lots. The developers appealed and when the appeal reached this court, the developers argued that the increased assessments on the remaining lots were improper because Section 602.1(i) of the Assessment Law only permits a change in assessment on subdivided lots that have been sold or improved. This court disagreed, noting that the developers' construction would violate the Uniformity Clause:

> In enacting Section 602.1, the General Assembly recognized that the assessed value of the subdivided property does not automatically increase merely because it is subdivided. By adding a requirement that prior to being reassessed that one of the lots is to be conveyed or improvements had to be made, the General Assembly recognized that the sale of a lot would establish the property's market value and any improvement, even to only a portion of the parcel, would have an effect on the value of the remaining parcels, thereby warranting that each lot be reassessed up or down. The General Assembly expressed a similar sentiment in Section 513(b) of the Pennsylvania Municipalities Planning Code, [Act of July 31, 1968, P.L. 805, *as amended*,] 53 P.S. § 10513(b) by providing:
>
> > The recording of the plat [subdivision] shall not constitute grounds for assessment until such time as lots are sold or improvements are installed on the land included within the subject plat.
>
> Both of these provisions indicate the intent of the General Assembly to forbear reassessing property merely because it has been subdivided, but once there has been a change in condition of the property, i.e., such as a sale or

> improvement, to allow a reassessment of each new lot to occur.
>
> Moreover, it has been consistently held that the uniformity provision of the Pennsylvania Constitution requires that all real estate similarly situated must be taxed at the same amount. In *Lower Merion Township v. Madway*, 427 Pa. 138, 147, 233 A.2d 272, 278 (1967), our Supreme Court struck down a provision that exempted new residential construction from increased taxation until it was sold as being violative of the uniformity provision . . . . It held that uniformity demands that "one person's real estate tax must be computed in the same manner as his neighbors." By adopting [d]evelopers' suggested interpretation [that the assessment of remaining lots cannot be increased until sold], unconstitutional non-uniformity of taxation of the type struck down in *Lower Merion* would result. As in *Lower Merion*, one landowner's property would be valued differently than his or her neighbor's simply because his or her lot was or was not sold. . . . Such a result . . . would violate the uniformity requirement . . . because owners of neighboring lots would pay substantially different amount[s] in real estate taxes.

Kraushaar, 603 A.2d at 265-66 (footnote omitted, emphasis deleted). *Accord Penn's Grant Assocs. v. Northampton County Board of Assessment Appeals*, 733 A.2d 23 (Pa. Cmwlth. 1999).

Thus, *Kraushaar* demonstrates that once a lot in a subdivision has sold, the tax authority is authorized under Section 602.1 to increase the assessment of *all* the remaining unsold lots and that such reassessment serves to maintain uniformity of assessments.

Here, there is no evidence that the County's reassessment occurred because one of the lots or homes in the development had sold, thereby triggering a reassessment of the remaining lots in accordance with Section 602.1. In fact, the

record supports a contrary conclusion. Neil testified that the increased assessment did not occur as a result of a sale following subdivision. Rather, he stated that the County valued the lots at the higher value when the property was originally subdivided (although this value does not appear on the assessment record) but declined to assess based upon that value until that particular property left the developer's hands. Thus, the County appears to be engaging in the very practice rejected in *Kraushaar*, increasing the assessment of a property only upon sale to a residential owner, despite that other properties had previously sold, thereby establishing the market value of the remaining unsold lots. As common pleas noted, the County's practice provides the developer with a tax break while forcing neighboring residential owners of similar lots to pay a higher rate of tax. Pursuant to Section 602.1, the increased assessment should have occurred following the sale of the first lot in the development; at that time, the market value of the remaining lots was established. However, by waiting to increase the assessment until each lot was sold, the County violated the Assessment Law as there is no authority to change an assessment at that time.[7]

For the foregoing reasons, we affirm the decision of the court of common pleas.

BONNIE BRIGANCE LEADBETTER,
President Judge

[7] Since the County failed to increase the market value of the lots in accordance with Section 602.1, presumably its only other option is to pursue individual assessment appeals in an attempt to establish a higher base year market value for the lots.

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O R D E R

AND NOW, this 22nd day of December 2010, the order of the Court of Common Pleas of Washington County in the above-captioned matter is hereby AFFIRMED.

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BONNIE BRIGANCE LEADBETTER,
President Judge