

[J-139-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

DOWNTOWN AREA SCHOOL DISTRICT	:	No. 31 MAP 2004
	:	
v.	:	Appeal from the Order of the Commonwealth Court entered March 20, 2003, at No. 183 C.D. 2002, affirming the Order of the Court of Common Pleas of Chester County entered December 28, 2001, at No. 00-01233.
CHESTER COUNTY BOARD OF ASSESSMENT APPEALS AND LIONVILLE STATION S.C. ASSOCIATES	:	
	:	
APPEAL OF: LIONVILLE STATION S.C. ASSOCIATES	:	819 A.2d 615 (Pa. Cmwlth. Ct. 2003)
	:	
	:	RESUBMITTED: July 21, 2006

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: December 27, 2006

I respectfully dissent.

First, I disassociate myself from the majority's discussion that properties subject to assessment appeals end up carrying a heavier tax burden than other properties. The majority takes this argument from the dissenting opinion in Vees v. Carbon County Bd. of Assessment, 867 A.2d 742 (Pa.Cmwlth.Ct. 2005). In her dissenting opinion in Vees, Judge Friedman expressed concern that "counties use different methodologies to value properties in county-wide assessments as opposed to assessment appeals." Id. at 750. The majority springboards off of Judge Friedman's dissent in Vees and produces an argument asserting

that the methodology used for valuing properties following an appeal filed by a taxing authority differs from that employed in other assessments; the majority also states that because of this differing methodology, properties which are subject to an appeal filed by a taxing authority are taxed more heavily than other properties. M.O. at 13-17. The majority concludes that the Legislature has thus effectively “carved out a class of taxpayers who are subjected to an unfairly high tax burden - - namely, those whose assessment is appealed by any taxing district in which the property is located.” M.O. at 17. The majority finds that as “this classification is not based on any legitimate distinction between the targeted and non-targeted properties, it is arbitrary, and thus, unconstitutional.” Id.

While an issue regarding whether properties subject to appeals filed by taxing authorities are taxed more heavily is an interesting one, it was not presented by Appellant. Appellant makes no argument that properties subject to appeals are systematically subject to higher taxation. Rather, its argument revolves around Deitch v. Board of Property Assessment, Appeals and Review of Allegheny County, 209 A.2d 397, 401 (Pa. 1965). Appellant contends that since it has proven that a handful of other strip malls are assessed at a lesser rate than its own strip mall, then, per Deitch, the assessment of Appellant’s property violates the Uniformity Clause. As I believe it improper for this court to speak to an issue not raised by the parties - particularly one of constitutional dimension - I cannot join the majority opinion.¹

Furthermore, I write to express my disagreement with the majority’s rejection of the method employed by the State Tax Equalization Board (“STEB”) for determining a county’s common level ratio in favor of the common law Deitch method. In my opinion, the Deitch method of computing the common level ratio is unsatisfactory. For example, the Deitch

¹ Furthermore, I note that our limited grant did not encompass a federal equal protection issue. Thus, I believe it improper to discuss the federal constitution in this matter.

method of computing the common level ratio allows a taxpayer to adduce only evidence relative to properties which are similar to the one he owns. The Uniformity Clause, however, requires that all types of property must be taxed at the same rate. See Keebler Co. v. Board of Revision of Taxes of Philadelphia, 436 A.2d 583, 584 (Pa. 1981).

Also, the Deitch method requires only the scantest of evidence to establish the common level ratio. Deitch cited with approval a case in which a taxpayer adduced evidence relative to merely three other similar properties in the county. Deitch, 209 A.2d at 403 (citing Brooks Building Tax Assessment Case, 137 A.2d 273 (Pa. 1958)).

On the other hand, the method utilized by the STEB for computing a county's common level ratio is quite comprehensive. The STEB utilizes the records of all real property transfers in each county for a given calendar year, examining both residential and commercial property transfers. It considers only arm's-length sales and excludes transfers it considers "questionable" in an effort to ensure that its statistics are as accurate as possible. 61 Pa.Code § 603.31(b) and (d). The STEB also "[p]eriodically . . . compare[s] selling prices] with market values on the same properties, as appraised by independent appraisers when available." 61 Pa.Code § 603.31(e).

In my opinion, the STEB's method for computing a county's common level ratio is more sound than the common law Deitch method. The STEB method arrives at a common level ratio only after considering the bulk of all arm's-length property sales - whether these sales are of residential or commercial property - in a county. The Deitch method, on the other hand, permits a landowner to establish the common level ratio by looking only to a single class of property; it also permits a landowner to establish his case via a fairly scant amount of evidence. It is apparent that such a methodology would be prone to gross distortions. The STEB method of adducing the common level ratio, on the other hand, is far more likely to arrive at an accurate common level ratio as it is a broad ranging study of a county. Thus, contrary to the position taken by the majority, I believe that we should reject

the Deitch method of valuation and embrace the STEB's method of computing the common level ratio.

For the foregoing reasons, I dissent.

Mr. Justice Eakin joins this dissenting opinion.