

LEVIN ORDERS REASSESSMENT

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BYLINE: ED PALATTELLA

Erie County Senior Judge George Levin, in a landmark ruling that will affect every property owner, today ordered Erie County government to conduct the first countywide property reassessment since 1969. Levin said county government must complete the massive property review by no later than Oct. 1, 2000. Appeals could delay the date, but Levin said the county must receive court approval for postponements.

Levin sided with the Millcreek Township School District, which in 1995 took on the politically charged issue by suing Erie County government to force a reassessment. The school district's lawyers contended that the lack of a general reassessment since 1969 had made property taxes in Erie County _ and particularly in Millcreek _ outdated, nonuniform and thus unconstitutional.

Levin's 29-page legal opinion and order ended the nonjury civil trial over reassessment; lawyers presented closing arguments Feb. 4. Levin today wrote that county taxpayers, based on the trial evidence, are indeed "receiving discriminatory treatment" in terms of property taxes.

"This court cannot countenance such an injustice," Levin wrote.

He also stated: "The dusty and antiquated assessment records call out from their resting place in the Erie County Courthouse and demand that the court take this necessary action, even though it may be unpopular with some of the citizenry of Erie, for it is the only method by which appropriate relief may be granted."

The decision, while prompted by Millcreek's suit, applies to the owners of all the approximately 113,500 parcels of real estate in the county. A reassessment means assessors for the county will review each property and determine whether its assessed value, or taxable value, is in line with its current market value.

The school district claimed the taxable values of property in Erie County did not reflect the properties' current market values. The district and other municipalities levy property taxes by applying the millage rate to the properties' assessed values.

Help from Lancaster

Levin's ruling, as he noted in the decision, is the opposite of the ruling he made on the same issue more than six years ago. Levin in 1990 rejected the city of Erie's legal attempt to force the county to conduct a reassessment.

The different outcome, Levin wrote, is due to several factors. They include the precedent a civil case out of Lancaster County case set in 1990, shortly after Levin ruled against the city. The Lancaster case, Levin wrote, gave a plaintiff in a reassessment case the legal leeway to use certain data to try to prove that property taxes are nonuniform.

In the Millcreek case, lawyers Tom Agresti and Tim Riley built their core argument of nonuniformity around a statistical analysis that focused on sales data for properties sold in Erie County from 1993 to 1995. The State Tax Equalization Board, or STEB, collected the figures.

The STEB data came under attack by Thomas Talarico and his co-counsel, Anthony Angelone, who represented county government in the trial. Using a strategy the county employed successfully in the 1990 case, the county this time again argued that the STEB data was statistically flawed because it was not drawn from a random sample of properties. The county contended the school district had not proven its case by the civil court standard of a preponderance of the evidence.

Levin disagreed. He reasoned that the Lancaster County case, which Pennsylvania Commonwealth Court upheld, allowed the Millcreek School District to use the STEB data.

"Admittedly, in the past this court indicated it thought otherwise, but that was before Lancaster," Levin wrote regarding the legitimacy of the STEB data. "The Lancaster court implicitly embraced the use of STEB data as a valid vehicle for determining whether inequities existed in real property assessments."

'Much more'

While he noted the appropriateness of the STEB data, Levin nonetheless said reliance on that information alone was not enough for the Millcreek School District to win the case. "If, in fact, that had been the only basis for Millcreek's lawsuit, this court might have been constrained to deny Millcreek's request," he wrote. "There was, however, much more."

A main supporting factor, the judge wrote, was one the school district emphasized at trial _ the element of time. The district argued that the lack of reassessment since 1969 led to an obvious conclusion: that the county's real estate taxing system, due to no reassessment in 27 years, had failed to account for massive changes, such as heavy suburban growth.

"Since that time (1969), there have been dynamic changes in the real estate market as well as major shifts in land development," Levin wrote. "Granted, there is no statutorily created time limit which mandates reassessment; however, one must use common sense to see if these significant changes ... have affected the uniform taxation of the residents of Erie County."

Levin, in addition to time, listed other factors that he said "would dictate the necessity of court-ordered reassessment." They are:

+Y The county assessment office's "insufficient and outdated instructions and guidelines." Levin wrote that the assessment office's appraisers have had no choice but to use the guidelines to evaluate new properties or parcels that have been added to or demolished.

+Y The lack of adequate grading standards in the assessment office guidelines.

+Y The "lack of uniformity in the assessments of mobile homes in Erie County."

+Y The inadequacy of a review the assessment office had done of properties on Erie's bayfront.

"All of this," Levin wrote, "makes the (county assessment) board's procedures on setting assessments suspect. While any of the above infirmities alone might not have been sufficient to order reassessment, when considered as a whole and in their totality, it is evident that Millcreek's plea for a countywide reassessment is justified and merited.

"If the court did otherwise," Levin wrote, "it would not be

carrying out its judicial obligation and as such would be subject to severe criticism from all parties."

'No greater challenge'

The lawyers for the school district argued at trial that the procedures of the assessment office had contributed to the skewed tax rolls. Levin accepted that argument in ordering a reassessment, but also wrote that he wanted to stress his "ruling is not to be construed as a criticism of the (assessment office) employees."

He wrote that the workers were attempting, "to the best of their ability," to uniformly assess Erie County while relying on inadequate instructions and guidelines.

"Indeed," Levin wrote, "this was tantamount to asking a racing team to win the Indianapolis 500 with a Model T Ford."

Keeping it current

In concluding, Levin urged the county to establish a new system for the assessment office. He said the county needs an assessment process that will keep the tax rolls as uniform and as fair as possible in the years after a reassessment. Erie County Executive Judy Lynch, due to testimony at the reassessment trial, already has ordered the assessment office to formulate a written manual by the middle of the year.

"This court notes that there is no greater challenge to government than to devise a system of taxation which ensures equality and uniformity," Levin wrote in his opinion. "The ultimate goal of the (assessment) board should be to conceive a plan where absolutely no one is forced to shoulder any expense, not even one dollar, in excess of his or her fair share.

"Likewise, no one shall pay even one dollar less than is equitable."

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