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A Property Owner Has No Appeal Rights If He or She Fails to Attend the Board of Property Assessment Appeals and Review Hearing.

Judge R. Stanton Wettick recently ruled on the issue of whether property owners who fail to attend an owner-initiated tax assessment appeal before the Board of Property Assessment, Appeals and Review (“BPAAR”) have a right to have BPAAR issue a decision. The Court found that property owners have no right to a disposition on hearings they fail to attend. In Tarchick v. Bd. Of Prop. Assessment, Appeals and Review, (C.P. Alleg. Co. December 24, 2003) Property Owners, appealed their 2002 assessment to BPAAR. A hearing was scheduled for July 11, 2002 and Property Owners were notified of the hearing date and time (the “Notice”). The Notice stated: “Failure to appear or comply with these requirements will result in the appeal being dismissed and the assessment will remain unchanged,” and “If you fail to appear at the hearing, unless you have requested a postponement, your appeal shall be dismissed and the assessment will remain unchanged.” The Property Owners, by their own admission, did not appear for the BPAAR hearing. BPAAR did not issue a disposition nor did it give notice to the Property Owners of the dismissal.

Property Owners argued that BPAAR violates the General County Assessment Law (the “Law”) in that it does not require BPAAR to render a decision that can be appealed to the Court of Common Pleas. The Court held that Allegheny County is a home rule municipality which does not require it to follow the provisions of the Law. The Court noted that even in light of the above, BPAAR adopted a proper statutory procedure borrowed from the Fourth to Eighth Class County Assessment Law. Property Owners also argued that BPAAR violated Article 5, Section 9 of the Pennsylvania Constitution and 42 Pa.C.S. §5105(a)(2) which both require the right of appeal. The Court, in these instances, observed that neither of the above precludes a dismissal without decision when the moving party fails to appear. The Court concludes that both BPAAR Rules and the Notice are clear and unambiguous. Failure of the Property Owner to appear for an appeal hearing he or she initiated will result in the dismissal of the appeal without further recourse to the Court of Common Pleas.

The implications of this Court’s decision are profound for both property owners and taxing jurisdictions. Tarchick affirms the legitimacy of the Board of Property Assessment Appeals and Review and its ability to regulate its own procedures. Property Owners must take affirmative steps to secure a continuance of their

hearings in the event that they are unable to attend the already scheduled hearings. Failure to do so not only eliminates their right to have hearings before BPAAR, but as provided for in Tarchick, also eliminates their right to appeal a “no change/dismissal” to the Board of Viewers and the Court of Common Pleas. It also prevents the Property Owner from bypassing the BPAAR appeal and moving straight to the Board of Viewers in a modified version of “forum shopping.” With respect to taxing jurisdictions, this decision means that school districts and municipalities that defend against property owner appeals can be assured that an assessment will remain unchanged for that particular tax year if the property owner fails to appear for his or her hearing. Taxing jurisdictions that prepare for an appeal hearing that does not take place because of the taxpayer’s failure to attend will now avoid the waste of further economic resources because they are no longer required to prepare a second time for an appeal to the Board of Viewers. Also, this decision will aid the stability of the taxing jurisdiction’s tax revenue by being able to rely on that particular assessment. Property Owners beware, attend your appeal hearing or waive your right to challenge your assessment.

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