

DAUPHIN COUNTY BOARD OF COMMISSIONERS

PUBLIC HEARING

FEBRUARY 16, 2011

9:00 A.M.

MEMBERS PRESENT

Mike Pries, Vice Chairman

George P. Hartwick, III, Secretary

Jeff Haste, Chairman (ABSENT)

STAFF PRESENT

Steve Howe, Director of Tax Assessment; Jeff Engle, Esq., Solicitor; August Memmi, Director of Community & Economic Development and George Connor, Community & Economic Development

GUESTS PRESENT

Brad Jones, Dave Black, Wendell Hoover, Dan Deitchman and Roy Christ

MINUTES

CALL TO ORDER

Mr. Pries, Vice Chairman of the Board, called the Public Hearing to order at 9:00 a.m.

PRESENTATIONS

Mr. Engle: The purpose of today's Hearing is to conduct a Public Hearing with regard to the assessment and overall evaluation for consideration of a tax abatement ordinance. These ordinances are under the Local Economic Revitalization Tax Assistance Act, as well as the Improvement of Deteriorating Real Property or Areas Tax Exemption Act. I'll refer to these as LERTA and IDRPA for ease. With regard to our consideration today, prior to adoption of any ordinance or resolution authorizing or granting tax exemptions, the municipal governing body needs to affix the boundaries of a deteriorated area or areas. Also we need to determine what those boundaries will be, as well, determining what the cost of

improvements per unit to be exempted will be and any applicable schedule that should be adopted.

I would like to note to the Commissioners that over the last 20 years since approximately 1980, the County and School District have adopted or ratified what the City had done in the past. We have had a working relationship with their ordinance, however, my office or the Office of the Solicitor for the Dauphin County Board of Assessment Appeals was asked to review the current sitting LERTA Ordinance and the IDRPA Ordinance in light of the Harrisburg City Council's adoption and Mayoral ratification of Harrisburg City Bill #26. On December 30, 2010, the Harrisburg City Council passed Bill #26 of 2010, which was signed by Mayor Thompson on January 5, 2011. The purpose of the Legislation was to adopt exemptions for City properties, both residential and commercial and industrial, within the City of Harrisburg pursuant to the IDRPA Ordinance, which applies only to residential properties and the LERTA Ordinance, which applies to commercial and industrial properties.

Among the issues for review was whether Dauphin County was obligated to adopt the same language for its ordinance as the County, City and Harrisburg City School District had done for the last 20 years. The determination is that all three taxing bodies need not adopt the same ordinance, rather each have the opportunity to adopt and administer their own independent ordinances. While the concept of a unified ordinance is appealing for a number of economic, administrative and interpretative reasons, the use of Bill #26 by the County is not recommended for the reasons which I will outline.

The IDRPA Ordinance for residential properties and the LERTA Ordinance for commercial and industrial properties, both provide local taxing authorities with individual opportunities to adopt an optional resolution to exempt deteriorated properties from real estate taxation. The operative word "may" in both Statutes has been highlighted by the Commonwealth Court recently in **Jennison Family** as providing individual taxing bodies the option to adopt the same program, their own program or no program of the concurrent municipal entities.

In summary the County does not have to adopt the 2011 Proposed City LERTA Abatement Program that was recently ratified by the City. The County does not have to readopt the City's 2011 Proposed LERTA Abatement Program, because we have done so in the past. The County may adopt its own LERTA Abatement Program for administration in conjunction with the Harrisburg City School District.

The specific concern that I have with regard to Bill #26, from a legal standpoint, is one that it probably blends two schedules. The IDRPA, the residential properties and LERTA is commercial, for example Bill #26 blends the two exemption schedules for the respective Statutes into one exemption schedule. This is illegal. Section 2A Sub 1 of Bill #26 provides an illegal exemption schedule for residential construction and business improvements in deteriorated neighborhoods. The

provision allows an exemption schedule as follows: Years 1-3 100%, years 4, 5, 6, 7 and 8 a reduction of 80%, 60%, 40%, 20% and 0%. However, the IDRPA Ordinance, which again is for residential properties only and not both residential and business, allows for one of four possibilities. Those possibilities are outlined as a ten-year schedule, a five-year and one of two selections for a three-year schedule, either a three-year 100% or a ten-year, 100% schedule. So there is two ten-years, one five-year and two three-years.

Bill #26 does not meet the criteria for IDRPA with regard to its provision for exemptions on residential construction, which does not meet the proper length of one of the four schedules as it provides for a seven-year schedule and not a five, ten or three-year schedule. It is not a proper exercise of one of the four percentage applications.

With regard to deteriorating neighborhoods, Section 2(b)(1) of Bill #26, which again mixes residential exemptions with business improvements, which are considered commercial or industrial, that should be governed by LERTA. Under this particular section, the Bill provides the following schedule: Year 1 – 100%, Year 2 – 85%, Year 3 – 70%, Year 4 – 55%, Year 5 – 40%, Year 6 – 25%, Year 7 -10%. This Bill does not provide for one of the four appropriate exemption schedules or adhere to the proper term of years (10, 5 or 3). As such, for residential exemptions under IDRPA, it is illegal. It is legal, however, for commercial or industrial properties as it does not exceed the 10 year cap.

Section 2(c) of Bill #26 identifies LEED certified business improvements. LEED is intended to provide building owners and operators a concise framework for identifying and implementing practical measurable green building design, construction, operations and maintenance solutions. Again, it mixes LERTA and IDRPA in an illegal way to provide for illegal exemption schedules for residential properties.

There is an improper blending of terms of either LERTA or IDRPA with the Keystone Opportunity Zone, otherwise referred to as "KOZ". A KOZ is a geographical area designated by the State's Department of Community and Economic Development upon application of one or more political subdivisions. There are a number of criteria for designation, the common theme of which is below-average economic standards. Twelve KOZs are authorized.

A KOZ locality must exempt real property tax, earned income and net profits tax, gross receipts-type business privilege taxes, mercantile license tax and local sales and use taxes. Bill #26 promotes confusion by attempting to rectify the advantages of the LERTA and IDRPA exemptions with tax credits to owners-occupiers of residential real estate. A real estate tax exemption has nothing to do with a tax credit. As such, the problems arising from improper interpretations of the two distinct definitions and applications should be avoided by designing an ordinance that does not seemingly use these definitions or applications interchangeably.

It is the recommendation of my office that the County pass two separate ordinances that would provide for a tax abatement schedule for the LERTA and IDRPA properties. Legislation could be made to apply retroactively.

Mr. Pries: Thank you Mr. Engle. Are there any comments or questions?

Mr. Hartwick: Obviously when we had this dialogue and discussion it was quite evident to me that the cutting and pasting didn't work from the legal office of the City of Harrisburg, let alone the ability to research the basis of a LERTA. Not on the definitions, the mixing of the LERTA and IDRPA and the fundamental flaws in the Ordinance, I think the other part that was truly amazing to me was that the Harrisburg Ordinance made it clear that they didn't care what the County or the School District did and they wanted to administer their own ordinance, which by the way is illegal. Clearly they have not demonstrated the ability to move forward and administer anything with a great deal of competence or confidence. I've never been a part of, being a Mayor of a former urban community and understanding the LERTA and Tax Abatement programs pretty well, I've never been a party to, whether it be the Commissioner or the Mayor of an urban community or even discussions with other communities across the Commonwealth, in a position where the participating entities within that district, which would include the school district and the county were not required to adopt the same ordinance to allow for consistency across all those taxing authorities. I thought that was even more disturbing to thumb their nose at the county. Quite frankly, I don't think the City has even thought through the ability to establish how they are going to manage this particular ordinance. It is not only illegal, but they have no ability or way to be able to administer this. Quite frankly from the County's perspective, we understand and I particularly understand from an urban community's perspective the importance of a tax abatement program. The cost of real estate in downtown Harrisburg when placed in comparison to other suburban communities quite frankly absent the ability to offer those incentives, folks who own real estate here aren't even in the game. You can't even participate with costs per square foot. The cost for an acre is about \$1 million versus maybe \$30,000 or \$40,000 per acre in a suburban community. The comparisons are just not allowable for a competitive marketplace to exist in Harrisburg. Quite frankly I'm glad this ordinance is going to be deemed illegal and am looking forward to trying to continue some rational tax abatement language from the County's perspective to continue, and I want to be clear this is not corporate welfare folks. The idea that this somehow is providing incentives and corporate welfare to people downtown, this is just allowing the business community to stay in the game in downtown Harrisburg. Quite frankly, one of the reasons why I'm clearly glad that we reviewed their ordinance and are going to make the recommendations of our Solicitor today to obviously have the initial ordinance be adopted; the actual ordinance that we had for ten years. We had two consecutive year extensions to be able to revert back to that ordinance from the County's perspective. I see we have the School Board President here as well. I want to make sure that we are actively communicating that to the School District, because

they quite frankly, represent the largest part of the real estate for the residents of the City of Harrisburg and would hope that we would have some concurrence, at least in the School District, for continuance to move forward in that direction.

Mr. Pries: You have a great deal of knowledge on this topic. As usual you are very passionate about it. Mr. Solicitor, what are we required to do today in terms of this meeting and the presentation prior to a future meeting? Are we actually going to propose something from our end and vote on it or is this simply a public meeting and then we take this into consideration at another date?

Mr. Engle: We are not adopting anything today. We are on an informational gathering mission today. I think there are members here from the community, from the various economic development communities, planning commissions that would like to highlight what they believe the abated areas should be, the perimeters, as well as what the cost that should be enacted and what the schedule should look like.

Mr. Hartwick: Was anybody from the City notified about this hearing today?

Mr. Engle: Yes, it is my understanding from speaking to the administration here that the City was specifically called to attend.

Mr. Pries: Without further ado then we'll move along to Item III, which is public comment. Is there anybody that would like to comment on anything related to this topic, feel free to come up and state your name for the record and who you are representing.

Mr. Black: My name is Dave Black. Thank you for the opportunity to be here. Let me just kind of frame where we are and give you a little background. We have a number of people from the development community with us today. We have a group that we put together well over a year ago called "Harrisburg 2020" that is designed to seek investment in the City of Harrisburg. To Commissioner Hartwick's point of view, it's keeping the business community in play in Harrisburg. More importantly, it is keeping Harrisburg in play. For the record, I know the Commissioners know this, but I think it is important just for the general record and something that we pride in our communication with Council is a result of a LERTA or the residential tax abatement program, the City loses nothing or any municipality if our County adopts this, loses absolutely nothing they have in taxes now. That needs to be crystal clear. We have had continued challenges.

We are very appreciative of this Hearing in an opportunity to clean this up a little bit. I can just say when the City passed what it passed, we were so thankful to get anything passed that there was a short-lived moment of jubilation. It was nice to see that there was going to continue to be what we thought was a LERTA Tax Abatement Program over seven years and probably did not see a lot of the nuts and bolts in that. Having said that I think there is an opportunity to work with the

County in whatever you come up with and in conjunction with the School District, which clearly has the biggest stake in taxes in the City of Harrisburg. If there can be an agreement on some kind of ordinance that both the City and the County would adopt then I think there is an opportunity for the City to go back and now with the involvement of the State and their Act 47 team and some outside legal assistance perhaps can come to some consensus so there is a uniform LERTA program and residential tax abatement program.

Mr. Hartwick: Describe consensus?

Mr. Black: One that is consistent across all three taxing bodies. Consensus I know at the City level is different issues. I do know when the State put out its RFP for the 47 team's LERTA was something that was specifically identified to bring somebody to the table with expertise. I think that will be helpful.

Mr. Jones: I'm Brad Jones with Harristown Development Corporation. First of all I want to thank the Commissioners for their continued partnership on this issue. You understand the importance of economic development. Just too sort of reference specifically this program has been, the reauthorization of the tax abatement program, has been our 2020 Committee's number one initiative for the last two years. We started this committee in 2008. It is made up of many of our colleagues that are here today that represent the bulk of the development community. It is not a large community. Our committee makes up the bulk of the folks that are actually committed to doing development in the City even though it is arguably one of the more difficult places to make a development project happen. When you look at the taxes on improvements, the difference between having an abatement and not having an abatement program oftentimes, as you pointed out, is what throws the project to the suburbs or it just makes it impossible to do. The point I wanted to make is our committee from the beginning has been trying...We started out in this debate to try to actually make a much stronger abatement program than we had in the past to be what we refer to as sort of a game changer for really trying to grow the development and grow the commercial apartments, condominiums and commercial real estate development in the city. As we got through that debate with the City, as Dave said, we were just thankful frankly to get almost anything through. We ended up with a seven-year City-wide phased in tax abatement, which is less than what we have had for the last ten years. I know you both know very well that what we've seen in terms of development in the last ten years has not been tremendous. It has not been overwhelming. As I looked down the list of projects that we all know have occurred, those flagships of anchor projects that have occurred in the City in the last ten years, each and every one of those projects involved some subsidy, in addition to the use of the abatement program – some type of State grant or additional program subsidy. I know you know that this program is very much needed. Our hope was a ten-year abatement program was really our goal, even keeping what we had, because ten-years is a nice time horizon for commercial development, because usually your loans go out to about ten years and then you refinance them. Seven years is obviously not ideal, but

that's what we ended up with in the City. Our hope is for a City-wide program that covered the entire boundary of the City and a schedule that was at least as strong as what we had in place in the previous years.

Mr. Hartwick: Now those seven years are illegal, for residential.

Mr. Black: Let me just add on the residential end of it. I think ten years on a residential, particularly in the City for most residential properties is probably also in order. I think Wendell does a lot of residential. Do you want to comment on that?

Mr. Jones: Our group at the beginning of this discussion actually went out and hired a consultant to focus on demand for residential property in the City. Our consultant, who is a national consultant out of Maryland, said that they believed based on the study, that there was demand for 200 to 250 new units, whether those were apartments or condominiums at market rate each year for the next ten years. You may or may not believe that, but one of our colleagues, who was a believer, went out and bought the Riverview Manor and revitalized it and sold 76 condominiums, Mr. Deitchman back here, in a little less than a year. Those were priced in the price range of average price of \$140,000 or \$150,000. He evidenced that there was some traction to the study. We think there is still demand there.

Mr. Hoover: My name is Wendell Hoover, city resident. I have done residential redevelopment over the last eight years. I'm also a real estate agent, specifically residential. I do a lot of my work in the City. Right now there is definitely a supply in the market, but the reason, as evidenced by the Riverview Manor, of those newer condominium type units and those projects will not happen without the tax abatement. Even the redevelopment of properties, older properties, there is a plan market for that. We need that to continue also. There are two different groups of buyers, some wanting newer and some wanting the older more historic. Often when a buyer is looking at the bottom line their monthly payment is what they are looking at and those taxes are a huge part of that in the City. When they are deciding between the City and the suburbs on the residential side, just like the commercial developer, it is a numbers game, the abatement is extremely crucial to making the City a viable option for them financially.

Mr. Hartwick: Especially when you have all the other issues for young families. You need to provide some competitive opportunity and reason to...I firmly believe as our urban core goes so does the rest of the region. Quite frankly absent that kind of investment in the City we are going to see continued deterioration. Folks in the County need to realize that we are all in this thing together.

Mr. Pries: It is a good point Commissioner. Our eyes are pretty much wide open to what is occurring out there and what needs to be done and the level of support that you need from us moving forward.

Mr. Jones: I know you are all well aware of this, but just the number of blighted

buildings across the City, many of which are owned by the Harrisburg Redevelopment Authority or other public entities that have the ability to be revitalized, but are desperately in need of an investment. Many of those buildings are within the City and the Redevelopment Authority owns over 600 of those buildings. Our point all along is how is that going to happen if we don't have some kind of incentive like this.

Mr. Pries: Makes perfect sense to us.

Mr. Black: Two additional buildings, just to make a point of how critical LERTA is – McDevitt High School is going to be available. It is going to be on the market. There have been some studies. I hope they sell it. The minute that changes hands into the private sector, it goes on the tax rolls and you can't redevelop a project like that without some kind of tax abatement. It is probably going to take other incentives as well, but it is critical for publicly owned buildings or other buildings that have been off the tax rolls. You have to have a program in place like this, particularly when you have a footprint of land and building like the high school. That is a good tangible example of how this can be effective on a major project, let alone the good work that it has been doing in the neighborhoods throughout the City.

Mr. Pries: Is there anyone else that would like to come up and make some comments? (There was none.)

ADJOURNMENT

There being no further business, it was moved by Mr. Hartwick and seconded by Mr. Pries that the Board adjourn.

Transcribed by: Richie-Ann Martz