

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

<p>DAVID & RUTH GRABB; PINE RIDGE MANOR HOMEOWNERS ASSOCIATION, DCE PROPERTIES, INC., CORDAY YEAGER, THEODORE R. & ELLYN B. PAUL, SCOTT & JACQUELINE MIROWITZ, MARY & PATRICK MCARDLE, JEFFREY & KATHLEEN ROSS, GUPTA FAMILY LIMITED, PENINSULA PROPERTIES, MONROEVILLE CHRISTIAN JUDEA FOUNDATION, GARDEN CITY HALL, INC. AND KENNETH B. SKOLNICK,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>THE COUNTY OF ALLEGHENY and THE BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW OF ALLEGHENY COUNTY,</p> <p style="text-align: center;">Defendants.</p>	<p>CIVIL DIVISION NO. GD 02-13143</p> <p style="text-align: center;">COMPLAINT IN EQUITY</p> <p>Filed on behalf of Plaintiffs</p>
	<p>Counsel of Record for this Party:</p> <p>JOHN M. SILVESTRI, ESQ. Pa. I.D. No. 21479</p> <p>JOHN M. SILVESTRI, ESQ. Firm No. 618 1000 North Negley Avenue Pittsburgh, PA 15206 (412) 391-0958</p>

NOTICE TO DEFEND

YOU HAVE BEEN SUED in Court. IF YOU WISH TO DEFEND against the claims set forth in the following pages, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that IF YOU FAIL to do so, the case may proceed without you and A JUDGMENT may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. YOU MAY LOSE MONEY OR PROPERTY or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

LAWYER REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
920 CITY-COUNTY BUILDING
414 GRANT STREET
PITTSBURGH, PENNSYLVANIA 15219
(412) 261-5555

CERTIFICATE OF SERVICE

I certify that on November 1, 2002, a copy of the foregoing was served upon the person(s) set forth below at the address(es) set forth for each by

first class mail or hand delivery

GEORGE JANOCKO, ESQ. ALLEGHENY COUNTY LAW DEPT 300 FORT PITT COMMONS BUILDING 445 FORT PITT BOULEVARD PITTSBURGH, PA 15219	ISOBEL STORCH, ESQ. BOARD OF PROPERTY ASSESSMENT COUNTY OFFICE BLDG, 3 RD FLOOR 452 FORBES AVENUE PITTSBURGH, PA 15219
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COMPLAINT IN EQUITY

AND NOW, come plaintiffs and file the within Complaint in Mandamus and respectfully represent as follows:

1. Plaintiffs are owners of property in Allegheny County, as set forth in the Counts which follow, and the properties owned by them are or have been the subject of real estate tax appeals.

2. Defendants are THE COUNTY OF ALLEGHENY (the "County" herein) and THE BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW OF ALLEGHENY COUNTY (the "Assessment Board" herein), and these Defendants are responsible for the administration of the assessment of real estate for tax purposes, providing for real estate tax appeal hearings and providing administrative support for real estate tax appeal hearings.

3. The Plaintiffs have been subjected to such a degree of abuse and mistreatment as regards: the assessment of their real estate, the hearing process purportedly conducted by the Assessment Board, and the administration of changes in assessments of real estate, that:

1. The Plaintiffs have been deprived of due process under the statutory law and ordinances governing the assessing and hearing process, including the administration of post-hearing decisions.

2. The Plaintiffs have been deprived of due process under the common law of Pennsylvania jurisprudence.
3. The Plaintiffs have been deprived of due process under the Pennsylvania Constitution.
4. The Plaintiffs have been deprived of due process under the United States Constitution, as amended.
5. The Plaintiffs have been deprived of due process under the color of law in violation of their civil rights under 42 U.S.C. §1983, and because of the nature of the violations of Plaintiffs' civil rights, the Plaintiffs are entitled to damages and attorney fees in addition to the specific injunctive and declaratory relief to which each Plaintiff is entitled to remedy the legal wrongs committed against them.

4. A common element of the violations of due process perpetrated against the Plaintiffs and the violations of the Plaintiffs' civil rights is the under-funding of the entire process of assessing, conducting hearings, and administratively supporting hearing decisions.

1. This under-funding is known to the elected officials of the County and their senior policy-

making staffs and to the appointed members of the Assessment Board and their legal counsel.

2. In spite of this knowledge of under-funding, the elected officials of the County, their senior policy making staffs and the appointed members of the Assessment Board and their legal counsel have proceeded to assess and re-assess without having funds to hire appropriate support staff to do the work required to provide for due process and avoid violations of civil rights. This is documented in a letter from the County's Chief Assessing Officer to County Council, as follows:

March 10, 2002

Wayne Fontana, Member of County Council
119 Court House
436 Grant Street
Pittsburgh, PA 15219

Dear Councilman Fontana,

Pursuant to your request I am providing you with a status report on the Allegheny County Assessment Department from my perspective as the County's Chief Assessment Officer. This report is intended to assist you in evaluating how our assessing jurisdiction compares to standards developed by the International Association Of Assessing Officers (IAAO). The IAAO is an organization that promotes innovation and excellence in property appraisal, property tax policy and assessment administration through professional development, education, research and technical assistance. My report is segregated into the following topics: Resources; Facilities and Equipment;

Education, Training and Certification; Property Identification and Description; Public Information; Appeal Process; Reassessment Practices; and Organizational Structure. Final summary statements conclude the report.

Resources

"Normally, jurisdictions should budget for expenditures that, if efficiently utilized, permit attainment of equity measures specified in appraisal performance standards". IAAO Standard on Mass Appraisal of Real Property, March 1984

The FY 2002 budget for the Allegheny County Assessment Department is \$5,625,621. Allegheny County Assessment Department maintains 555,922 parcels. This equates to a FY 2002-budgeted cost of \$10.12 per parcel. According to the IAAO 1999 Major Assessment Jurisdiction Survey, similar sized jurisdictions (Philadelphia, PA; King County, WA; Palm Beach County, FL) that were surveyed had a 1999 budgeted cost per parcel between \$18.57 and \$31.28, with an average in the \$22 range. The Allegheny County Assessment Department budget, at \$10.12 per parcel does not adequately reflect the level of expenditures necessary to sustain equity on an annual basis.

The County assessment personnel require a suitable educational budget in order for them to obtain appropriate professional training and certifications as well as technical training. All newly hired assessors will be offered CPE training this year. Other training programs should be implemented to teach the staff computer skills. Computer software and hardware are of little benefit if users lack the skills for using them efficiently.

Finding the time to schedule assessor training is proving to be a difficult challenge due to the assessors' overwhelming workload and the current shortage of assessors. I am projecting that at least 25 assessment staff personnel will require CPE training this year, which will require 90 hours of each assessor's time alone. Computer training will also require a significant amount of time for each assessor as well. The time devoted to training is extremely important,

but it will take away from other important assessor activities that need to be accomplished this year.

The Assessment Department has recently lost some of its key personnel to private industry. The staff's compensation should be competitive with comparable positions in private industry in order to hire and retain good employees.

The Allegheny County Assessment Department currently has 32 appraisers/assessors on staff and 555,922 parcels. This equates to 17,372 parcels per assessor ratio. The IAAO Standard on Mass Appraisal states that a 5,000 parcels-per appraiser/assessor ratio may be a cause for concern. Allegheny County's parcel per appraiser/assessor ratio of 17,372 is a significant cause for concern. We are in the process of adding 10 assessor positions. This represents an encouraging first step toward resolving the appraiser/assessor understaffing issue, however my vision is to eventually have the Office of Property Assessment meet IAAO large assessment jurisdiction standards, which recommend 1 assessor for every 3500 parcels. This equates to eventually having 158 assessors on staff.

Facilities and Equipment

"Adequate office space should be provided. The arrangement should encourage teamwork, promote self-esteem, minimize distracting sights and sounds, and help each employee work efficiently. The assessment office should have office machines, in addition to computers, in quantities and with capabilities sufficient to meet the needs of the office. Computers are a critical part of the assessment function. Assessment offices must recognize that computer technology is changing rapidly. They should, therefore, frequently evaluate the adequacy of their systems and attempt to maintain systems at the current state of the art." IAAO Standard on Facilities, Computers, Equipment and Supplies for Assessment Agencies, May 1996.

The Allegheny County Office of Property Assessments' facilities and equipment are significantly inferior to current IAAO standards. The Chief Assessment Officer and staff

of assessors are located in a separate facility, away from the Assessment Manager and his staff, which are located in the main downtown County office building. In my opinion this arrangement is awkward and hinders proper assessment administration.

There is also a critical need for adequate and efficient office space as well as a need for an adequate number of computers and sufficient equipment. Assessment personnel are currently required to share computers, telephones and desks. Some 25 offices downtown are in current use as hearing rooms, which prevent their intended use as offices for assessment personnel.

The Office of Property Assessments' present CAMA system is inadequate to continue to use as an assessment tool. It lacks multi-year functionality and does not integrate easily with the County's land system. We have a critical need to create a new rollover file to use to input our FY 2003 data changes, however our current Fox-Pro application has reached its data storage limit. A request for proposal (RFP) is in the works for a new state-of-the-art CAMA system. Our goal is to have this new CAMA system in place by 2003. The timely implementation of a state-of-the-art CAMA system is crucial to the Assessment Department's future success.

Property Identification and Description

"Tax maps should be prepared according to current standards of detail and accuracy." Standard on Mass Appraisal of Real Property March, 1984

The Office of Property Assessments' tax maps are inadequate and not up to current standards of detail and accuracy. Complete and accurate maps and ownership records are essential to the assessment office. The Assessment Department has plans to upgrade the mapping function of the department within the next two years. Currently pens rulers are the tools of the trade for the Mapping Department.

The County plans to utilize a geographic information system (GIS) computer technology for managing its mapping and assessment information. The development of GIS data at the parcel level will occur in several stages. First all 40,000 block maps must be scanned to create a digital image. Then each parcel must be digitized within a CAD system. This requires a technician to click on every corner of every parcel. Third, the parcels must be registered. This process is a complex editing function that ensures that all images fit together to create one large map.

With GIS it is possible to develop highly sophisticated CAMA models. Once GIS is in place, the assessors will greatly benefit using this on-line assessment tool. GIS can also be an especially important resource for other public agencies for a variety of purposes. The implementation of GIS should remain a critical priority for the Assessment Department.

Public Information

"Every assessing office should develop a procedures manual that includes a section detailing how staff should communicate with the public and it should serve as a training guide for employees. The public needs to know why assessments are made and what is financed by property taxes. The taxpayer should be made aware of the assessment process, the budgeting process, and the tax rate process." Standard on Public Relations, June, 1988

A public relations program needs to be developed that outlines how staff should communicate with the public. The Office of Property Assessments should also have an on-going public education program to promote awareness of circuit breaker programs that will provide outreach and assistance to those wishing to apply for the benefits.

Appeals Process

"Special consideration should be given to situations in which a large number of appeals is expected." Standard on Public Relations, June, 1988

FY 2001 proved to be an extraordinary year for appeals. There were over 90,000 appeals filed as a result of the FY 2001 revaluation. As of this writing over 55,000 appeals were heard. This activity severely drained both the Office of Property Assessment's resources and budget and it severely restricted the accomplishment other day-to-day assessment duties. I have concerns about providing adequate defense of values, however, I have equal concerns regarding the Office of Property Assessments' ability to accomplish the day-to-day assessment activities given the critical shortage of assessors. Both activities are important. Both should be accomplished, but proper resources must be available before the both expectations can be met.

Reassessment Practices

It is important to make a distinction between two important terms - reappraisal and reassessment.

Reappraisal means the process of physically inspecting and revaluing each parcel at least once every six (6) years. Physically inspecting means, at minimum, observing each property from the public right-of-way in order to ascertain that the physical characteristics necessary for reappraising are complete and accurate. An independent estimate of market value for each parcel by the appropriate use of one or more of the accepted three approaches to value is then developed.

Reassessment means a systematic analysis of all assessments, either within an assessing unit or within a class of a special assessing unit, to assure that they are at the stated uniform percentage of value as of the valuation date of the assessment roll upon which the assessments appear. Reassessment applies to a group of parcels. It is synonymous with the terms revaluation and update. A reassessment can be completed by a reappraisal of all parcels, trending all parcels to current value, or a combination of both.

In FY 2001, a reappraisal of all properties within Allegheny County was completed. For FY 2002, the County of Allegheny underwent a reassessment of its' properties.

Appropriate assessment professionals reevaluated the factors that affect value, expressed the interactions of those factors mathematically, and used mass appraisal techniques to estimate property values. The result of this activity generally created fairer values and greater uniformity of assessments throughout the County. The Office of Property Assessments goal is to refine and improve the assessment process for use in developing its' FY 2006 assessed values.

Organizational Structure

The Chief Assessment Officer was appointed in November 2000 to assume the duties of office as described in the County Administrative Code. Since then, the Administrative Code has been revised to reflect a different role for the Chief Assessment Officer. The organizational chart for the Office of Property Assessment has also been revised on numerous occasions. It may need further study. Greater steps should be taken to ensure that all those involved in the management of the Office of Property Assessments are assessment professionals. They should be required to have a strong assessment background and solid assessment experience to lead the department in an efficient and effective manner. I also believe it should be mandatory for everyone involved in the department to conduct their activities in accordance with the IAAO Code of Ethics and Standards of Professional Conduct.

Summary

In conclusion, I find it remarkable that the Office of Property Assessments has accomplished so much in so little time with so few resources. Everyone involved should be recognized for his or her extraordinary efforts.

Allegheny County Office of Property Assessments, however, does not yet have the level of resources, facilities, equipment, tax maps, and professional expertise to perform on par with other similar sized jurisdictions that are better funded. The Office of Property Assessments' budget, at \$10.19 per parcel does not appear to adequately reflect the level of expenditures necessary to sustain equity on an

annual basis. The County assessment personnel also require a suitable educational budget in order for them to obtain appropriate professional training and certifications.

The timely implementation of a state-of-the-art CAMA system is critical to the Assessment Departments' future success. The Office of Property Assessments' tax mapping system should also be upgraded to current standards of detail and accuracy. The implementation of GIS should also remain an important priority for the Assessment Department.

A public relations program needs to be developed that outlines how staff should communicate with the public. The Office of Property Assessments should also have an on-going public education program to promote awareness of circuit breaker programs that will provide outreach and assistance to those wishing to apply for those benefits.

Greater steps should be taken to ensure that all those involved in the management of the Office of Property Assessments are assessment professionals. They should be required to have a strong assessment background and solid assessment experience in order to lead the department in an efficient and effective manner. I also believe it should be mandatory for everyone involved in the Office of Property Assessments to conduct their activities in accordance with the IAAO Code of Ethics and Standards of Professional Conduct.

Respectfully submitted,

Susan E. Caisse
Chief Assessment Officer

5. In addition to the policy of the County not appropriately funding and staffing the work of assessing, conducting hearings, and administering assessments, there are unwritten policies through which legitimate tax appeals filed by property

owners to the Board of Assessment are denied. These unwritten policies are carried out by Assessment Board hearing officers, case reviewers, staff, and training personnel, and include:

1. Refusing to consider a sale of a comparable property which is more than three years old, but utilizing a four or five year old sale price of the property under appeal and adding an arbitrary rate of inflation so as to justify not lowering an assessed value even though current market data and conditions indicate that there has been no appreciation and that the subject property should have a lower assessment.
2. Case reviewers conducting additional factual research after a hearing has closed for the purpose of countermanding a hearing officer's recommendation for a decrease in assessment, and in certain instances, case reviewers have approached hearing officers with post-hearing-gathered evidence in an attempt to request the hearing officer to countermand a recommendation for a reduced assessment. Needless to say, this additional evidence was not subject to cross-examination, in violation of due process.

3. Since the year 2001, the pool of hearing officers has greatly been diminished. This is not because of disinterest on the part of the pool of hearing officers originally hired, but based upon hiring policies, which are believed to involve a higher degree of control. At least one hearing officer, who has complained about the practice of case reviewers approaching hearing officers to have a recommendation to decrease an assessment countermanded, have been taken off the hearing officer list, and such a reprisal against a hearing officer attempting to provide fairness, is publicized to other hearing officers.

6. Hand in hand with the policy of the County failing to appropriately fund and staff the work of assessing and conducting hearings, and not having assessors attend hearings, is the failure to consider or correct important mistakes in property characteristics, e.g., if verified evidence is submitted that the "Finished Living Area" of a residence is less than calculated by the County, there is zero follow-up on the part of the Board of Assessment staff or the Assessor's office to verify and correct the difference.

7. As a direct and proximate result of the policy of the County to not appropriately fund and staff the work of assessing,

conducting hearings and administering assessments and hearing decisions, the Plaintiffs have suffered damages.

8. Each of the foregoing paragraphs are incorporated in each of the following Counts, including the claims for damages including attorney fees.

REQUEST FOR RELIEF AS TO ALL PLAINTIFFS AND THOSE SIMILARLY SITUATED

WHEREFORE, it is requested that this Honorable Court issue a Decree for each Plaintiff as requested in each Plaintiff's Count, requiring the County of Allegheny and the Board of Assessment to perform their ministerial functions and to award damages and attorney fees for violations of due process under 42 U.S.C §1983. If the Court finds that there has been an under-funding of assessment operations, it is requested that the Roddey administration and County Council be required to provide appropriate funding to properly staff the Board of Assessment and the bureaucracy associated therewith in the operation of assessment functions, and to prohibit further County-wide re-assessment until appropriate funding is provided.

COUNT AS TO

DAVID & RUTH GRABB VS. THE COUNTY AND THE BOARD OF ASSESSMENT

9. David & Ruth Grabb were the owners of real estate known as 2153 Beckert Avenue E., block & lot 79-N-148.

10. An appeal was filed to reduce the assessment of said property before the Board of Assessment for the year 2001.

11. On or about December 11, 2001, a hearing was conducted at which time evidence concerning the physical characteristics of the property (37 stairs from the sidewalk to the front door and the property having the same kitchen and bath for 40 years) was presented as well as sales of comparable properties (at 1318, 1422, and 1612 East Beckert Avenue) which produced a hearing officer's recommendation for a reduction. On December 27, 2001, a Disposition of Appeal from real estate assessment was issued sustaining the original assessment.

12. A review of the file revealed the fact of the hearing officer's recommendation for reduction and a clerical error in respect of the transposition of numbers relating to the assessment.

13. Said clerical error was brought to the attention of the appeals manager of the office of Property Assessment, being David Bushee, and upon his concurrence that a clerical error occurred, he stated that he would present the clerical error to the Board of Assessment for correction and at the same time issued a memo dated January 24, 2002 to property owner's counsel which stated that said property would be under consideration by the Board of Assessment and that the Board of Assessment would issue a new Disposition Notice following subsequent action to be taken by the Board of Assessment.

14. It is believed that the Board of Assessment began a process of reconsideration inasmuch as the Board of Assessment's January 31, 2002 minutes state at page 6:

A motion was made and seconded to rescind the Disposition issued for block & lot 79-N-148 and to review the case. Motion carried unanimously.

15. As of yet, no new notice of Disposition has been issued.

16. In an effort to resolve this issue, property owner's counsel corresponded to Sue Caisse, Chief Assessor, and Dom Gambino by a letter dated April 9, 2002, and by a letter dated May 15, 2002 to Kevin F. McKeegan, Esq., Sue Caisse, and Dom Gambino, however, there has been no reply.

17. At the time of the hearing, the value of the subject property was \$72,300 and the owner's opinion of value was no greater than \$60,000.

18. The property was eventually put up for sale and sold on April 2, 2002 for \$55,000 in an arm's length transaction.

WHEREFORE, it is requested that a Decree be issued, including a Declaration of Rights, that (a) the Board of Assessment issue a Disposition of Appeal Notice, (b) for such other relief as this Court deems just under the circumstances.

COUNT AS TO

PINE RIDGE MANOR HOME OWNERS ASSOCIATION VS. THE COUNTY
& THE BOARD OF ASSESSMENT

19. The Pine Ridge Manor Homeowners Association is the owner of property utilized as common area identified as tax parcel 9935-X-83482.

20. An appeal was filed on behalf of the Pine Ridge Manor Homeowners Association before the Board of Assessment, and at the time of hearing, evidence was submitted that the property is common area under a planned unit development for which the assessment and taxes should be zero.

21. On December 27, 2001, a Disposition of Appeal from Real Estate Assessment was issued sustaining the original assessment.

22. A request for reconsideration of the decision was made, and on January 24, 2002 the appeals manager of the office of Property Assessment issued a memorandum to property owner's counsel stating that said property was currently being reviewed by the Board of Assessment and that upon a completion of the review, a new Disposition Notice would be issued to "reset the 30 day window for appeal to the Board of Viewers".

23. On January 31, 2002, the Board of Assessment did consider the issue, as it is mentioned in its January 31, 2002 minutes whereby it is stated:

Block & Lot 9935-X-83483 and 9935-X-83482. These are homeowner association appeals for Pine Ridge Manor. There was an error in the Disposition Notice. The value for block & lot 9935-X-83483 was reduced to zero. The value for block & lot 9935-X-83482 was not reduced.

24. Although the Board of Assessment noted in its minutes that it was reconsidering the no-change of block & lot 9935-X-83482, no subsequent Disposition Notice was ever issued, as the January 24, 2002 memo from David Bushee, appeals manager, stated would be issued.

25. It is to be noted that the Pine Ridge Manor Homeowners Association also owns block & lot 9935-X-83483, which is also common area and the result of that hearing, conducted at the same time and before the same hearing officer as block & lot 9935-X-83482, was reduced to a zero assessment as required by 68 Pa.C.S. §5101 et sec. as required by §5105.

26. In an effort to resolve this issue, in addition to the action taken by the property owner's counsel as set forth above, property owner's counsel corresponded to Kevin F. McKeegan, Esq., Chairman of the Board of Assessment by a letter dated November 27, 2001, to Sue Caisse, Chief Assessor, and Dom Gambino by a letter dated April 9, 2002, and to Kevin F. McKeegan, Esq., Sue Caisse, and Dom Gambino by a letter dated May 15, 2002. The only person to respond or otherwise acknowledge said letters was Sue Caisse, who

through a telephone call, advised that the computer code assigned to the common area property not reduced to zero would not permit a zero assessment, and that for common properties entitled to zero assessments, a new computer code was either being developed or had just been developed in order to prevent the future assessment of such property.

WHEREFORE, it is requested that a Decree be issued, including a Declaration of Rights, that (a) the Board of Assessment issue a Disposition of Appeal Notice or (b) that the Board of Assessment be required to issue a Disposition Notice that the assessment of said common area parcel is reduced to zero, and (c) for such other relief as this Court deems just under the circumstances.

COUNT AS TO

DCE PROPERTIES VS. THE COUNTY AND THE BOARD OF ASSESSMENT

27. DCE Properties, Inc., is the owner of real estate in Monroeville known as block & lot 743-B-152 which is a part of a larger parcel consisting of one economic unit with block & lot 743-B-135, 743-B-143, and 743-B-162.

28. Appeals for block & lot 743-B-152 as well as the other three parcels were filed for the tax year 2001.

29. All four tax parcels were purchased in October 2000 for \$1,050,000 and was 90% vacant at the time of the purchase.

30. A hearing was conducted, at which time evidence of the arm's length purchase transaction was presented as well as defects and problems concerning the property which were not disclosed prior to the time of purchase.

31. The owner's opinion of value was less than the purchase price given the undisclosed defects concerning the condition of the property at the time it was purchased.

32. All of the paperwork submitted at the time of the hearing, including a chart which prorated the purchase price of the four tax parcels and which prorated the owner's opinion of value of the four tax parcels to the four tax parcels based upon the respective assessed values of the four tax parcels was offered for each of the four appeal files, however, the hearing officer advised that only one set of paperwork should be submitted since all four appeal files were to be decided as a group and processed as a group.

33. A review of the four appeal files for DCE Properties in November of 2001 indicate that the hearing officer recommended reductions in the assessed value consistent with prorating the purchase price to the assessed values.

34. Disposition Notices from the appeal were issued for the four tax parcels consistent with the hearing officer's recommendation, however, with respect to said tax parcel 743-B-152, board members Debra Baron, Laurel McAdams, and Jim Skindzier pulled said appeal file for block & lot 743-B-152 and countermanded the

hearing officer's recommendation by ordering a "no change", with a notation that there was no evidence supporting a lower assessment.

35. A review of the hearing appeal file for block & lot 743-B-152 in January of 2002, revealed that none of the evidence submitted at the time of hearing for all four parcels was placed in said appeal file for block & lot 743-B-152, but rather all the paperwork was placed in one of the appeal files for block & lots 743-B-135, 743-B-143, and 743-B-162.

36. Said appeal files were shown to David Bushee, appeals manager, and through discussion it was determined that the fact that none of the evidence submitted at the time of hearing for block & lot 743-B-152 was in the hearing file, the situation would be presented to the Board of Assessment through a letter explanation from John M. Silvestri. Additionally, David Bushee, as the appeals manager of the office of Property Assessment, advised that for Board of Assessment reconsideration, it was necessary for the property owner not to file an appeal to the Board of Viewers, and after further discussion, David Bushee issued a memo to property owner's counsel dated February 26, 2002, stating "The Board will either take action or will render a no action decision. Should the Board render these cases with no action, a new Disposition Notice will be issued that will reset the 30 day window for appeal to the Board of Viewers.", which memo was issued within 30 days of the Disposition

Notice, which David Bushee re-dated "1/28/02" due to it not being mailed until that date.

37. In an effort to resolve this issue, property owner's counsel corresponded to Kevin F. McKeegan, Esq., chair of the Assessment Board, by a letter dated February 4, 2002; to David Bushee, appeals manager, by a letter dated February 12, 2002; to Kevin F. McKeegan, Esq., by a letter dated April 10, 2002; and finally to Kevin F. McKeegan, Esq., Sue Caisse, and Dom Gambino by a letter dated May 15, 2002, however, there has never been a reply.

38. As of October, 2002, all four appeal hearing files had duplicate copies of the evidence inserted, but none of the files contained the letters referenced in the preceding paragraph or David Bushee's memo dated February 26, 2002.

WHEREFORE, it is requested that a Decree be issued, including a Declaration of Rights, that (a) the Board of Assessment issue a Disposition of Appeal Notice and (b) for such other relief as this Court deems just under the circumstances.

COUNT AS TO

CORDAY YEAGER VS. THE COUNTY AND THE BOARD OF ASSESSMENT

39. Corday Yeager is an individual who owns property known as 715 Wenzell Avenue, City of Pittsburgh, block and lot 36-S-184.

40. On February 28, 2001, an appeal was filed on behalf of Corday Yeager concerning her property before the Board of Assessment. This is documented by a copy of the Assessment Appeal.

41. On April 4, 2002, a Notice of Appeal Hearing was issued by the Board of Assessment for April 19, 2002 at 10:00 a.m. at 332 County Office Building. This is documented by the Notice of Appeal Hearing.

42. On April 9, 2002, a memo was issued from the Board of Assessment to "Hearing Officers and Case Reviewers" on the subject of "Appeals Procedures - Frequent Questions" and states, inter alia:

The Board relies on the Hearing Officer to provide a supportable rationale for a recommendation and expects the Case Reviewer to assure that a recommendation is properly substantiated.

* * * * *

A Hearing Officer or Case Reviewer who has personal knowledge of an area or more suitable sales comparable to those introduced at a hearing may supply this information for the Board's consideration.

There is documentation of this Memo.

43. On April 19, 2002, a hearing was conducted for Corday Yeager's property by Hearing Officer William J. Keck. Set

forth below is information from the County Treasurer's Office (which the County Treasurer's Office stated was obtained from the Board of Assessment) which was discovered during inquiries as to the irregularity of due process and procedures as set forth in this count. Multiple inquiries requesting a review of the Board of Assessment hearing file to the Board of Assessment staff produced responses indicating that the file could not be found.

1. A "2001/2002 Appeal Hearing sign-in sheet" was completed.
2. A "Power of Attorney for Property Tax Evaluation and Appeal" was submitted.
3. A letter from Corday Yeager consisting of 18 hand written paragraphs with a "Single Family Residential Property Questionnaire" form was submitted, together with certain exhibits referenced therein, being exhibits 1, 1A, 2, 4, 6, 7, 8, 9, 10, 13, 14 and 18, which show extreme physical deterioration to the Yeager property and deterioration of surrounding properties in the neighborhood. Also submitted were a "Property Characteristics Form - Single Family" and Corday Yeager's handwritten notes on the "Building Information" web screen correcting the square footage of living areas and referencing the

deteriorated properties across the street at 736 Wenzell Avenue and next door and 737 Wenzell Avenue.

4. Information concerning sales of comparable properties was submitted for 737 Wenzell Avenue, sold 6/1998 for \$22,000, 2469 Wenzell Avenue, which sold 11/1998 for \$50,900 and 2414 Wenzell Avenue sold 1/2000 for \$57,187 which information included a photograph of each property and the "General Information" and "Building Information" web screens from the County for those three properties and the Yeager property.
5. A "2001/2002 Hearing Officer Report" on which Hearing Officer William J. Keck recommended a reduction of assessed value from \$65,000 to \$56,000 for 2001 and from \$101,400 to \$56,000 for 2002.
6. A "Property Data Checklist" was completed by Hearing Officer William J. Keck indicating that the "condition" for the property was incorrect suggested a downward value adjustment made upon the aforementioned "2001/2002 Hearing Officer Report".

7. A Hearing Officer, whose initials are "E. ? S." wrote notes on what appears to be a post-it stuck to the "2001/2002 Hearing Officer Report" stating "strongly disagree; comps are ridiculous; see no support to lower assmt; period:" dated 5/2/02.
8. A "Resolution of Appeal Case Issues" form signed by Fred Valicenti on either "5/7" or "5/9" recommended no change to the 2002 Certified Assessment and changing the 2001 Certified Assessment to \$100,000.
9. A 7/16/2002 printout in response to a request as to appeal status was generated by Board of Assessment staff under Program 0573010 and user ID key 87020, which shows "Market Values" as "previous: \$65,000", "at appeal: \$101,400" and "post appeal: \$56,000" with dates of "Board Review date: 5/16/2002, Board Approve Date: 5/23/2002, and DISP Mail Date: 06/07/2002", however no disposition was ever mailed.
10. A "County of Allegheny Official Change Order AE - 200205241100" with an entry date of 5/24/2002 showing a "Before County Value" of \$104,400 and an "After County Value" of \$56,000.

11. A 6/25/2002 "County of Allegheny Official Change Order AE - Appeal 341" document showing a county value of "before \$65,000", "additional \$35,000" and "after \$100,000."

44. At no time was a Hearing Decision or Disposition Notice mailed to John M. Silvestri as the attorney for Corday Yeager or to Corday Yeager, and at no time was any Notice of Assessment Change mailed to Corday Yeager.

45. Nowhere in the County Treasurer's copy of the Board of Assessment file, and nowhere in the evidence submitted to the Board of Assessment, is there any evidence to support an increase in the value of this property for 2001.

46. The failure of the Board of Assessment to issue a disposition of the appeal at the time a decision was made, is in violation of the law and has denied the property owner review rights in the Court of Common Pleas in violation of due process of law.

47. In the alternative, to the extent there was a Change Order revising the assessment after the Disposition of Appeal before the Board of Assessment, the failure to issue a Notice of Assessment Change is in violation of the law and has denied the Plaintiff due process rights of review before the Board of Assessment.

WHEREFORE, it is requested that a Decree be issued, including a Declaration of Rights, that (a) the Board of Assessment

issue a Disposition of Appeal Notice, (b) that in issuing a Disposition Notice, the Board of Assessment ignore any new evidence submitted by any Case Reviewer or Assessment Board member and (c) for such other relief as this Court deems just under the circumstances.

COUNT AS TO

**THEODORE R. & ELLYN B. PAUL VS. THE COUNTY AND
THE BOARD OF ASSESSMENT**

48. Theodore R. and Ellyn B. Paul are the owners of real estate located at 1290 Shady Avenue, Pittsburgh, PA 15232, designated as block & lot 85-L-107.

49. The Pauls filed a timely year 2001 tax appeal before the Allegheny County Assessment Board.

50. On April 24, 2002, unbeknownst to the Pauls, their tax appeal was dismissed.

51. No notice of a dismissal of their tax appeal was sent to them as required under the law. The last communication from the Pauls requested that the appeal hearing be postponed due to a medical condition. This letter consisted of mailing back the hearing notice of April 24, 2002 with the handwritten notations thereon "I will be in the hospital for tests on this day. Can you please schedule for the following week? Thank you, T. R. Paul".

WHEREFORE, it is requested that (a) the Board of Assessment be required to issue an official notice of the dismissal of their appeal for the year 2001 and 2002, so that the Pauls may

exercise their rights of appeal to the Common Pleas Court Board of Viewers and (b) for such other and further relief as this Court deems just under the circumstances.

COUNT AS TO

**SCOTT & JACQUELINE MIROWITZ VS.
THE COUNTY AND THE BOARD OF ASSESSMENT**

52. Scott and Jacqueline Mirowitz are the owners of real estate located at 26 Old Indian Trail Court, Fox Chapel, designated as block & lot 621-R-25.

53. Scott and Jacqueline Mirowitz filed a timely year 2001 tax appeal before the Allegheny County Assessment Board.

54. The tax appeal was scheduled and duly noticed, but personal circumstances interfered with their attendance of the noticed hearing.

55. The County / Assessment Board website displayed a 4/15/2002 dismissal of the 2001 tax appeal, but no notice of a dismissal of the tax appeal was sent to the Mirowitzes as required under the law.

56. On May 15, 2002, counsel for Scott and Jacqueline Mirowitz corresponded to the Board of Assessment requesting either a rescheduled hearing due to personal circumstances encountered by the Mirowitzes at the time of the hearing or for the issuance of a notice of dismissal which could be appealed to the Common Pleas Court Board of Viewers. This letter was directed to Kevin F.

McKeegan, Esq., Sue Caisse, and Dom Gambino, however, there was no response.

WHEREFORE, it is requested that the Court require the Board of Assessment to issue an official notice of the dismissal of the Mirowitz tax appeal for the year 2001, so that they may exercise their rights of appeal to the Common Pleas Court Board of Viewers, or in the alternative, enter a declaratory judgment that the year 2002 appeal they filed is entitled to be heard.

**COUNT AS TO PROPERTY OWNERS WHOSE
2001 APPEALS ARE NOT YET SCHEDULED FOR HEARING**

57. The following property owners filed appeals before the Board of Assessment for the year 2001:

1. Mary & Patrick McArdle own property known as 987 Greentree Road, Block & Lot 17-K-16.
2. Jeffrey & Kathleen Ross own property known as 815 Fifth Avenue, Block & Lot 307-G-212.
3. Gupta Family Limited owns property known as 625 Allegheny River BLVD, Block & Lot 364-K-34.
4. Peninsula Properties owns property known as 616 Lincoln Avenue, Block & Lot 160-F-127.
5. Monroeville Christian Judea Foundation owns property known as McGinley Road, Block & Lot 970-B-286.

6. Garden City Hall, Inc., owns property known as 500 Garden City Drive, Block & Lot 742-E-186.

58. Except for the appeal of Garden City Hall, Inc., which was filed by its officer, all other of said aforementioned year 2001 appeals were timely filed for said other property owners by property owners' counsel, listing as the address for property owners' counsel: 800 Amberson Avenue, Pittsburgh, PA 15232.

59. After property owners' counsel moved his office in April of 2001, multiple notifications of the move were made to the Board of Assessment staff, and it was learned that the new address of the property owners' counsel could not be overwritten by the scheduling staff into the County's computer system for the purpose of giving notices of hearings to property owners' counsel at his correct address.

60. Property owners' counsel prepared a list of every case he filed and requested communications concerning scheduling. One of the lists provided to the Board of Assessment Staff was confirmed in a letter dated August 7, 2001.

61. In spite of the scheduling staff knowing the new correct address of property owners' counsel and having been provided with a list of all of property owners' counsel's cases, many notices of hearings were sent to the incorrect address, and a number of appeals were dismissed without notice.

1. It is to be noted that the telephone and fax numbers for property owners' counsel did not change and that after property owners' counsel provided a list of appeals he filed (on more than one occasion) property owners' counsel received telephone notice, fax notice, and mailed notice in envelopes on which property owners' counsel's correct address was handwritten. In fact, there were days when property owners' counsel presented 15 to 20 appeals at hearings scheduled for the appeals without having received one written notice because he received verbal notice.

2. Where dismissed appeals were ascertained due to the lack of written notice to the correct address and a lack of phone, fax or verbal notice, the dismissed appeals were rescheduled for hearings.

62. The allegations concerning the lack of due process in the failure to provide notices of dismissal set forth in counts pertaining to property appeals for the Pauls and Mirowitzes are incorporated herein by reference.

63. It is believed and therefore averred that the notices mailed to property owners' counsel as to the aforesaid property owners identified in this Count for whom property owners' counsel filed appeals, contained the return address of the Board of

Assessment, however, the Board of Assessment never attempted to resend the notice or otherwise contact property owners' counsel of returned notices.

64. It is believed and therefore averred that the Board of Assessment solicitor has acknowledged a problem with providing appropriate notice for the property owners identified in this count for whom property owner's counsel filed appeals, and that there is a desire to reschedule said appeals for year 2001 hearings, however, re-scheduling has not yet occurred and this count is included in this lawsuit as a prophylactic measure to ensure that the property owners' rights to have hearings for year 2001 appeals are preserved.

65. As for the Garden City Hall, Inc. appeal, property owner's counsel was retained after the hearing for said appeal was scheduled, but before the hearing was conducted. The property owner's counsel requested a postponement in writing before the hearing date, by a letter dated August 7, 2001, hand delivered to Board of Assessment staff.

66. To date, despite communications seeking the rescheduling of the hearing for the Garden City Hall, Inc. property, there has been no expression from the Board of Assessment scheduling staff to schedule the hearing.

WHEREFORE, it is requested that this Honorable Court make a determination that the property owners identified in this Count

(a) are given year 2001 tax assessment appeal hearings with proper notice to their counsel or (b) are given disposition notices that their appeals are dismissed so that further appeals may be filed in Common Pleas Court for hearings before the Board of Viewers or (c) are entitled to such other and further relief as is just under the circumstances and (d) for damages.

COUNT AS TO

KENNETH B. SKOLNICK VS. THE COUNTY AND THE BOARD OF ASSESSMENT

67. Kenneth B. Skolnick is an individual who owns property known as 119 Rock Haven Lane, Block and Lot 192-P-310.

68. For the year 2002, Dr. Skolnick timely filed a real estate tax appeal before the Board of Assessment.

69. Prior to the hearing, Dr. Skolnick retained counsel due to medical conditions. In conferring with counsel, it was determined that there were two mistakes in the property data upon the Skolnick property record card and as posted on the County website and a possible third property data issue:

1. The "Finished Living Area" for the Skolnick property was measured by the County and/or Board of Assessment as 6,605 square feet, however, a review of the County property sketch indicates that the County or Board of Assessment includes in "Finished Living Area" 542 square feet of the

second floor of the two-story structure which has no floor space because this space is a cathedral ceiling above a first floor room which measures 19' x 28.5'.

2. The County or Board of Assessment lists the "Roof" as "slate", but in fact the roof is composed of cement tiles, a material which is 20% of the cost of slate.
3. Additionally, a significant portion of the property surrounding the structure is on a severe slope, and as it turned out, the property record card does not include any topography adjustment even though a significant portion of the Skolnick property land is unusable due to slope conditions.

70. At the time of hearing, said three issues were presented concerning the fact that the Skolnick residence only had a finished living area of 6,063 feet rather than 6,605 square feet, and the fact that the roof material needed to be changed, however, the hearing officer advised that her guidelines were such that no square footage adjustment should be made to "Finished Living Area" because only outside measurements count and that she knew of no other roof category to adjust the composition of the roof. The

hearing officer did not indicate whether she would make a recommendation to adjust the topography.

71. This hearing officer did not take any notes on the property characteristics adjustment sheet, as is typical for a hearing officer to do during a hearing when incorrect property characteristics are brought to the attention of the hearing officer.

72. It is believed and therefor averred that if there is a discrepancy of more than 500 feet in "Finished Living Area" between the County or Board of Assessment records and information provided by a property owner, the hearing review process dictates that an assessor or other data collection staff should re-measure and inspect the property, however, it is the experience of property owners' counsel that when such issues have heretofore occurred, there has been a failure to accomplish such a review process between the time of the hearing and the time a decision is rendered.

73. It is believed and therefor averred that part of due process in this case includes a post-hearing, pre-decision reinspection of the subject property for the correction of the inaccurate property characteristics of "Finished Living Area" and "Roof" material as well as "topography" inasmuch as any decision by the Board of Assessment must be made upon accurate property characteristics and the failure to correct such inaccurate property characteristics will lead to future over-assessment.

74. It is believed and therefor averred that the lack of appropriate funding inhibits this form of due process in the hearing process, and diminishes appropriate training for hearing officers to recognize appropriate definitions of "Finished Living Area" and the definition of "Roof" characteristic categories.

75. It is believed and therefor averred that the hearing, having occurred on Tuesday, October 29, 2002, remains in a review process for an additional three to four weeks, and hence this Court has an opportunity to order appropriate relief to require due process.

76. It is to be noted that when an issue occurred with respect to the "Finished Living Area" of County Chief Executive Jim Roddey's residence, within a matter of days, an assessor found time to re-measure the property, and a corrected "Finished Living Area" and a corresponding corrected assessment was posted on Mr. Roddey's property record card and assessment records.

WHEREFORE, it is requested that this Honorable Court issue a preliminary injunction requiring the County and/or Board of Assessment staff to re-measure the subject property and/or otherwise inspect to confirm the property owner's evidence that the subject property "Finished Living Area" should be reduced by 542 square feet and to determine the appropriate category for roof material and to determine the appropriate adjustment for topography and for such other and further relief as is just under the circumstances.

Respectfully submitted,

JOHN M. SILVESTRI, ESQ.
Attorney for Plaintiffs