



# CITY COUNCIL

## Strategic Planning Committee

**Monday, April 6, 2015**  
**Meeting Report**

**Attending:** J. Waltman & C. Daubert (Co Chairs), D. Reed, D. Sterner, S. Marmarou, F. Acosta, M. Goodman-Hinnershitz

**Others Attending:** L. Kelleher, C. Younger, V. Spencer, C. Snyder, M. Rozzi

The meeting was called to order by Mr. Waltman and Mr. Daubert at approximately 5:05 pm.

### **1. State Property Tax Exemption Legislation**

Mr. Rozzi stated that Senate Bill 4 is currently being considered by the State House and Senate that would redefine the approval process for Tax Exemptions through a proposed Constitutional amendment. He stated that the proposed amendment would weaken the approval process organizations must use to become non-profits, which increase the number of organization that are not required to pay taxes and reduce property tax revenue used by municipalities to cover the cost of public safety services. The net effect will require increases in property tax rates to make up the lost revenue.

Mr. Rozzi explained that currently applicants for non-profit status must pass the HUP (*Hospital Utilization Project v. Commonwealth*) test which was defined by the Pennsylvania Supreme Court. To be considered a "purely public charity" in the "HUP Test", all five elements of this test must be met:

1. Advance a charitable purpose;
2. Donate or render gratuitously a substantial portion of its services;
3. Benefit a substantial and indefinite class of persons who are legitimate subjects of charity;
4. Relieve the government of some of its burden; and
5. Operate entirely free from profit motive.

In 1997, the General Assembly passed Act 554, which relaxed some of the requirements for meeting the HUP Test. With two apparent separate standards for meeting the requirements of a purely public charity, the Pennsylvania Supreme Court was called upon once more to provide clarity on the issue.

Mr. Rozzi stated that if the referendum is approved by the electorate, non-profit applications will be considered by the State legislature, rather than current process, which will make the applications become political.

Mr. Rozzi stated that in Reading 32.3% of the properties are owned and operated by non-profit organizations, which is 7% greater than the number of non-profits located in Philadelphia and Pittsburgh.

Mr. Rozzi expressed the belief that this proposed mandate creates an unfunded mandate which will negatively impact those who are required to pay property taxes. He also expressed the belief that the bill will be approved by the House and the Senate and appear on the ballot as a referendum question at the Fall General Election.

Ms. Goodman-Hinnershitz suggested that Council consider a resolution in opposition to this proposed legislation.

Mr. Waltman stated that rather than weaken the requirements to become a non-profit, the legislature should consider increasing the controls on non-profits. He suggested applying caps on the number of non-profits.

Ms. Reed questioned how non-profits are monitored after they are approved. She used the example of churches and she questioned if they are monitored to ensure that they are still operating legally.

Mr. Denbowski stated that PILOTS paid by some non-profits are voluntary and that most make no voluntary contribution. Mr. Rozzi stated that if approved the amendment would end voluntary contributions.

Ms. Goodman-Hinnershitz expressed concern about larger organizations with large payrolls that become non-profits such as hospitals.

Mr. Waltman stressed the need for the State legislature to address various issues that have created revenue deficiencies in municipalities such as pension reform. He stated that the City's MMO has grown to \$15M annually and he questioned how the City can continue to cover that obligation as it continues to grow. He also noted the need to capture the untaxed income within municipalities.

Mr. Mann arrived at this time.

Mr. Acosta agreed with Mr. Waltman's comments. He expressed concern about the recent amendment of the Act 47 legislation and the negative impact it will have on Reading. He stated that the amendment forces Reading to rush out of Act 47 before the financial issues are corrected.

He questioned how the City can correct some of the revenue problems that are created by faulty State legislation. He noted his concern with the erroneous statements made by political candidates claiming that they will refuse to comply with the Act 47 regulations.

## 2. Act 47

Mr. Mann distributed a document outlining the changes to the Act 47 process that limits the period of time a municipality can be in the Act 47 process. He stated that Reading will need to begin the termination process as early as December 2019. At that point PFM must issue a report listing the City's financial conditions and make a finding that the City can either exit Act 47, recommend that a three-year exit plan is needed, recommend that the Secretary consider a determination of a fiscal emergency (that could result in receivership) or disincorporation. However, municipalities that have paid fire and police cannot be dis-incorporated.

If PFM recommends that the City exit Act 47, the Secretary of the DCED must consider the City's operational deficits, debt, the resolution of claims and judgments and the projected revenue to fund ongoing operations. Mr. Mann stated that any elected official or the general electorate through the petition process can appeal the decision made by the Secretary of the DCED.

If PFM recommends a three year exit plan, the City simply exits at the end of the third year and there is no appeal process.

Mr. Daubert questioned if receivership occurs whether the City's assets can be sold around the recent Charter amendment requiring referendum. Mr. Mann stated that he is unsure and that a court decision would most likely be required. Mr. Acosta questioned if a Charter amendment can trump State law.

Ms. Goodman-Hinnershitz and Mr. Waltman objected to the potential for the DCED to force the City to sell off assets to correct financial problems that were, in part, created by State laws. They both suggested that the State legislature provide municipalities with broader abilities or to correct improper unfunded mandates.

Mr. Mann stated that a few years ago the City's MMO was \$6M annually; however, that annual expense has risen to \$16M. He noted that if the projected increases to the MMO continue to rise as predicted (estimated at \$3M annually), the City will be unable to exit Act 47.

Mr. Waltman explained to Mr. Rozzi that municipalities like Reading need solutions that allow municipalities to close financial gaps that have been created by faulty State legislation such as the pensions.

Mr. Mann stated that if the Secretary decides to select the Fiscal Emergency option, an emergency plan is created to ensure that the necessary services are covered. The Secretary then schedules a public meeting with the City to negotiate a "consent agreement" that will provide long term stability. The agreement must include the payment of debt and pension obligations. If the

consent agreement is approved the City can exit Act 47. If the City violates the agreement receivership begins.

Mr. Mann stated that the Commuter Tax is unavailable in all post Act 47 options. The collective bargaining agreements must comply with any plan or agreement.

Mr. Mann explained that Receivership is a two year process. When receivership ends the Secretary can either recommend the termination of Act 47 status or appoint a coordinator for an additional three years.

Ms. Goodman-Hinnershitz agreed that the State legislature needs to correct legislation to provide municipalities with the ability to create solutions to the problems that caused the need to enter Act 47. She agreed with the need for pension reform; however, broader solutions are needed.

Mr. Mann predicted that Pittsburgh will exit Act 47; however, he stated that he is unsure how New Castle and Chester will fare. He noted that if Reading can find a solution to the growing pension MMO, Reading will probably be able to exit Act 47.

Mr. Waltman asked Mr. Rozzi to help Reading reform the State pension regulations for municipalities.

Mr. Rozzi stated that the State is currently trying to address the State pension regulations; however, the current political climate is not conducive to finding a viable solution.

Mr. Acosta thanked Mr. Mann for his explanation about the amendment to the Act 47 legislation. He stated that some political candidates are currently telling voters that they will refuse to follow the Act 47 Recovery Plan if elected.

Mr. Mann explained that if the City fails to follow the Recovery Plan, PFM can recommend receivership.

Ms. Reed noted that receivership ends representative democracy for a period of time.

Mr. Acosta stated that every candidate for a City office should be attending Council meetings to get educated on City issues prior to the election.

**As no other issues were brought forward, the Strategic Planning Committee meeting concluded at approximately 6:40 pm.**

*Respectfully Submitted by Linda A. Kelleher CMC, City Clerk*

December 2014

Pennsylvania Department of the

A SPECIAL REPORT:

# A Review of Potential Lost Revenue Due to Property Tax Exemptions

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Pennsylvania is at a major crossroads in the decades-long debate over how to define and review the property-tax exempt status of nonprofit organizations. A 2012 Supreme Court ruling that affirmed the courts' authority to define a purely public charity led to ongoing legislative efforts to pass a constitutional amendment that gives the legislature that authority. The amendment passed in the General Assembly last session and must pass the upcoming session before being put on the ballot for voters to either affirm or reject.

Counties, municipalities, and school districts continue to grapple with mounting financial challenges, while many nonprofits' charitable work is financially dependent upon their property tax exemption. The Department of the Auditor General wrote this report in an effort to provide taxpayers and other stakeholders with some data on the potential tax revenue from properties that are currently exempt from property taxes.

The Constitution of Pennsylvania permits the Pennsylvania General Assembly to exempt certain institutions of "purely public charity" (IPPC) from taxation.<sup>1</sup> Subsequent legislation specified that such institutions are exempt from property taxes at all levels, including at the county, municipal, and school district levels.<sup>2</sup>

<sup>1</sup> Pa. Const. Art. 8, § 2(a)(v).

<sup>2</sup> The General County Assessment Law, 72 P.S. § 5020-204(a)(9), and the Consolidated County Assessment Law, 53 Pa.C.S. § 8812(11) (recently enacted by Act 93 of 2010, effective January 1, 2011). The state's four state-related universities are also exempt from property taxes pursuant to 10 P.S. § 374(b).

For years, neither the state constitution nor the applicable legislation in effect at the time properly codified how to define a "purely public charity," leading to decades of wrangling between the Pennsylvania courts and the General Assembly as to who has the authority to establish that definition.

In 1985, the Pennsylvania Supreme Court defined the five requirements an institution must meet to be considered a "purely public charity" in *Hospital Utilization Project v. Commonwealth*<sup>3</sup> (the "HUP Test"). All five elements of this test must be met to attain IPPC status in Pennsylvania:

<sup>3</sup> 507 Pa. 1, 487 A.2d 1306 (1985).

<sup>4</sup> 10 P.S. § 371 *et seq.* (Act 55).

<sup>5</sup> 615 Pa. 463, 473, 44 A.3d 3, 9 (2012).

<sup>6</sup> 615 Pa. 463, 470, 44 A.3d 3, 7 (2012); *see also Stulp v. Commonwealth of Pennsylvania et al.*, 588 Pa. 539, 589-590, 905 A.2d 918, 948 (2006).

<sup>7</sup> SB 4 - JR-2 of 2013.

<sup>8</sup> "Taxpayer Alert: Property Tax Exemptions Cost County Millions," June 2012.

[http://www.alleghenycounty.us/news/2012/20120625a\\_taxExempt.pdf](http://www.alleghenycounty.us/news/2012/20120625a_taxExempt.pdf)

1. Advance a charitable purpose;
2. Donate or render gratuitously a substantial portion of its services;
3. Benefit a substantial and indefinite class of persons who are legitimate subjects of charity;
4. Relieve the government of some of its burden; and
5. Operate entirely free from profit motive.

In 1997, the General Assembly passed Act 55<sup>4</sup>, which relaxed some of the requirements for meeting the HUP Test. With two apparent separate standards for meeting the requirements of a purely public charity, the Pennsylvania Supreme Court was called upon once more to provide clarity on the issue.

In a 2012 case, *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*, the Pennsylvania Supreme Court reaffirmed the five element requirements for IPPC status (the “HUP Test”).<sup>5</sup> Importantly, the Supreme Court in *Bobov* also observed that: “[t]he ultimate power and authority to interpret the Pennsylvania Constitution rests with the judiciary, and in particular with this court” and stated that “... the Judiciary is not bound to the ‘legislative judgment concerning the proper interpretation of constitutional terms.’”<sup>6</sup> In short, the court stated that statutes enacted by the legislature did not carry the same weight as the judiciary’s interpretation of the constitution; if the legislature disagreed with this interpretation, the only remedy was to amend the state constitution.

In reaction to this Supreme Court decision, the General Assembly is currently attempting to pass a constitutional amendment to give the Pennsylvania legislature the sole authority to define a purely public charity. The joint resolution (Senate Bill 4, P.N. 347) passed the Pennsylvania House of Representatives and the Pennsylvania Senate in June 2013; it must pass again in the new legislative session, and then be affirmed or rejected by the voters of Pennsylvania.<sup>7</sup>

The Allegheny County Controller’s office explored this issue in a 2012 report that looked at property tax exemptions in Allegheny County.<sup>8</sup>

**2** Special Report on Property Tax Exemptions – [www.auditorgen.state.pa.us](http://www.auditorgen.state.pa.us) To better understand the potential impacts that properties with tax exempt status have on the counties, municipalities, and school districts in Pennsylvania, the Department of the Auditor General sampled ten counties across the commonwealth to identify those properties, and the dollar amounts of potential property tax liability.

## **METHODOLOGY**

All data was obtained from individual county offices for the 2014 tax year, with the exception of Beaver County, which provided the 2013 tax year. (See Appendix A for more details)

Each of the ten county property tax databases was reviewed to identify the following data:

- total assessed value of all properties, regardless of tax exemption status;
- all properties that have been assigned exemption status;
- medical facilities<sup>9</sup> that are classified as purely public charities.

<sup>9</sup> Medical facilities include properties where health care services are provided; these facilities could range in size from large healthcare systems down to nursing care facilities that provide medical treatments.

Once that data was compiled, we calculated and combined the potential tax liability for each property at the county, municipal, and school district levels.

Medical facilities that are classified as institutions of purely public charity were reviewed due to reports of high revenues of some institutions in this category, growth and consolidation in the industry, and the fact that many for-profit medical facilities do exist and pay property taxes. While medical facilities are highlighted as an example in this report, the department recommends that any scrutiny given to the

**3** Special Report on Property Tax Exemptions – [www.auditorgen.state.pa.us](http://www.auditorgen.state.pa.us) purely public charity status be done as a comprehensive review rather than singling out one category of institution.

Some purely public charitable institutions do pay property taxes on individual properties, as those individual properties generate income and may not be used in a way that fulfills their charitable mission. Thus, ownership of property by a tax-exempt organization is not the only determinant of a property being exempted.<sup>10</sup>

<sup>10</sup> Section 375(h) (relating to Parcel review) of the Institutions of Purely Public Charity Act 10 P.S. § 375(h), provides, in part: “(1) Nothing in this act shall affect, impair or hinder the responsibilities or prerogatives of the political subdivision responsible for maintaining real property assessment rolls to make a determination whether a parcel of property or a portion of a parcel of property is being used to advance the charitable purpose of an institution of purely public charity or to assess the parcel or part of the parcel of property as **taxable** based on the use of the parcel or part of the parcel for purposes other than the charitable purpose of that institution.”

In addition, it is possible that one or more of the IPPCs listed in this report may make Payments In Lieu of Taxes (PILOTs) to one or more taxing bodies that have jurisdiction over their property. However, because there is no standardization for how these voluntary payments are calculated, paid, and recorded it is difficult to determine if an IPPC makes payments in lieu of taxes, and if so, how much. An IPPC making a PILOT could be making a payment at any percentage of its potential tax liability.

#### 4 Special Report on Property Tax Exemptions – [www.auditorgen.state.pa.us](http://www.auditorgen.state.pa.us) **RESULTS**

**Table 1** provides summary information about ALL property in a county, including assessed value and total taxes if all parcels were taxed at county, municipal and school district levels. **Table 1: ALL Properties, 2014**

*\*Beaver County 2013*

<b>Total Assessed Value of All Property</b>	<b>Total County Taxes If All Parcels Taxed</b>	<b>Total Municipal Taxes If All Parcels Taxed</b>	<b>Total School Taxes If All Parcels Taxed</b>	<b>Total Taxes If All Parcels Taxed</b>	
<b>Allegheny County</b>	\$100,419,248,445	\$474,983,045	\$533,643,496	\$1,803,868,156	<b>\$2,812,494,697</b>
<b>Beaver County</b>	\$2,862,260,986	\$63,542,194	\$46,598,307	\$171,349,380	<b>\$281,370,964</b>
<b>Bucks County</b>	\$9,037,067,410	\$209,659,964	\$125,024,640	\$1,213,320,746	<b>\$1,548,005,349</b>
<b>Dauphin County</b>	\$18,774,831,500	\$129,095,741	\$68,742,472	\$354,320,831	<b>\$552,159,044</b>
<b>Erie County</b>	\$16,935,708,680	\$83,100,719	\$76,709,743	\$240,333,375	<b>\$400,143,838</b>
<b>Lackawanna County</b>	\$1,681,569,518	\$96,555,722	\$61,114,761	\$190,519,737	<b>\$348,190,220</b>
<b>Lehigh County</b>	\$33,735,438,800	\$109,040,505	\$68,543,195	\$462,985,225	<b>\$640,568,925</b>
<b>Luzerne County</b>	\$22,580,849,200	\$129,740,527	\$50,152,487	\$281,082,555	<b>\$490,975,569</b>
<b>Monroe County</b>	\$2,379,110,780	\$53,542,953	\$27,965,553	\$363,858,799	<b>\$445,367,305</b>
<b>Montgomery County</b>	\$62,971,264,46	\$198,485,426	\$215,851,540	\$1,670,328,426	<b>\$2,084,665,392</b>