

110 9th St

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110 9th St¹

Harrison Kinnane Smith

¹ Discussions with the Pittsburgh Cultural Trust regarding this work are ongoing. A public presentation of this proposal by the artist will be organized by Romance Gallery. This working proposal was made possible by the support of Theodoros Papazekos, Matthew Spiegel, Gabriel Cuéllar, Eric Golo Stone, Margaret Kross, and Jono Coles. Additional thanks to Hayley Haldeman and Annie Rosenthal.

Introduction

Famously described as “little Harlem,” Pittsburgh’s Lower Hill District was once a regional hub for black culture. In the 1950s, the neighborhood was razed by the City of Pittsburgh and replaced by the Civic Arena, the first home of Pittsburgh’s Civic Light Opera. Three decades after the destruction of this black cultural district, the Pittsburgh Cultural Trust was founded to develop “one or more cultural districts within the City of Pittsburgh.”² Since then, the Trust’s work has remained in Downtown Pittsburgh, immediately west of the Lower Hill. The Trust’s first major project was the renovation of the Benedum Center, which is the current home of the Civic Light Opera. The Civic Arena was demolished in 2012. The majority of the Lower Hill remains occupied by empty lots to this day.

This text proposes the creation of a public artwork at 110 9th St, Pittsburgh, PA 15222, a vacant lot in the Cultural District of Downtown Pittsburgh, owned and unused by the Pittsburgh Cultural Trust since 2000.³ In 2006, an application filed by the Trust to exempt 110 9th St from property taxes led to a series of appeals, hearings, and rulings which sought to determine the “use and occupancy” of the lot under Pennsylvania law.⁴ A 2009 ruling that “the Trust has failed to meet its burden of establishing that [110 9th St is] ‘necessary for the occupancy and enjoyment’ of the Trust” determined the land was ineligible for tax exemption and remains in effect today.⁵ The work described in this proposal is designed to change the use status of 110 9th St and entitle the Trust to an exemption from all property taxes currently associated with the lot as a consequence of its nonuse. The artwork’s sale contract requires that the Trust annually donate \$2,678.09, saved as a result of this artwork’s realization, to the Hill District Community Development Corporation’s nascent community land trust, tasked with providing affordable housing in the Hill District.

² Appeal of the City of Pittsburgh From the Board of Property Assessment Appeals and Review of Allegheny County, (Pa. Commw. 2009) p 7.

³ The parcel’s nonuse under Trust ownership is reported in a 2008 deposition of David R. DeSimone, who then served as Senior Vice-President of Operations and General Counsel for the Trust. However, in a 2020 Office of Property Assessments field packet (page 62), the building at 110 9th St was reported to be: used commercially by the Duff’s Business Institute through 2002, the Penn Technical through 2003, and the Pgh Technical Institute through 2004; as well as partially occupied by the Pittsburgh Cultural Trust in 2005. On February 6, 2025, the Pittsburgh Cultural Trust announced plans to convert the entire block containing 110 9th St into a public park and arts space named “Arts Landing.” The Trust broke ground on the project on April 29, 2025. The retention of architects and beginning of construction on 110 9th St legally constitutes “charitable use.” See Pferdehirt, Ronald H. et al. “Brief of The City Of Pittsburgh in Opposition to Tax Exemption,” City of Pittsburgh v. Board of Property Assessment Appeals and Review of Allegheny County, (Pa. Commw. 2008), p 2.; Allegheny County Office of Property Assessment Field Packet: 110 9th St, 0009-N-00196-0000-00. 2020, p. 2.; O’Driscoll, Bill. “New outdoor space ‘Arts Landing’ breaks ground in Downtown Pittsburgh” 90.5 WESA. April 29, 2025.

⁴ Pferdehirt, *supra* note 3 at 6; Board of Revision of Taxes of Philadelphia v. United Fund of the Philadelphia Area, 314 A.2d 530 (Pa. Cmwlth. 1973).

⁵ By breaking ground on its new “Arts Landing” project, the Trust’s use of 110 9th St has materially changed since this ruling. The Trust has, however, refrained from submitting new applications for tax exemption for 110 9th St, and the property remains legally classified as taxable “Vacant Commercial Land.” See Pferdehirt, *supra* note 3; Appeal *supra* note 2 at 11.

Proposal

The Pittsburgh Cultural Trust's first specific purpose, as listed in its bylaws, is:

(a) to acquire, build, restore, replace, preserve, maintain and manage land and buildings and any other interest in real and personal property of any kind or description whatsoever in connection with the planning, creation, development, operation, and administration of one or more cultural districts within the City of Pittsburgh or any facilities for use in the performing or visual arts in the City of Pittsburgh.⁶

Since its creation in 1984, the Trust has continued the vision of its founder, Henry J. Heinz II, by focusing its acquisition and management of real property in what has come to be known as the "Cultural District" of Downtown Pittsburgh (fig. 3).⁷ While many of these properties operate as arts venues or commercial spaces, the Trust has also acquired real estate for the explicit purpose of preventing its use in a manner considered "incompatible" with the Trust's goals.⁸ A consequence of the strategy has been the Trust's long-term possession of partially- and wholly-unused buildings and land.⁹ 110 9th St, a parcel that remained unused for 25 years following its acquisition by the Trust in 2000, is an example of this phenomenon (fig. 2). When the Trust applied for tax exemption on 110 9th St in 2006, its failure to demonstrate "charitable use" of the property proved the deciding factor in the court's ultimate denial of exemption.¹⁰

In Pennsylvania, property tax exemptions may only be applied to the "portion of real property of...[an institution of purely public charity] which is actually and regularly used for the purposes of the institution," provided that portion of real property is "necessary for the occupancy and enjoyment" of the institution.¹¹ The Commonwealth Court of Pennsylvania elaborated these requirements in 1995, holding that in order for the real property of a public charitable institution to qualify as tax exempt, "charitable activity of the entity must occur on the specific property for which exemption is sought, and the entity must own and occupy the property."¹²

During a series of appeals in which the eligibility of 110 9th St for tax exemption was contested, Judge R. Stanton Wettick Jr.'s 2008 ruling in favor of the parcel's total exemption stated "the

⁶ Quoted in Appeal, *supra* note 2 at 7. The 2009 ruling's reproduction of the Trust's bylaws is the most recent instance of their public publication. The organization's "specific purposes" as listed in their bylaws may have been modified since this ruling.

⁷ Pittsburgh's Downtown Cultural District is bounded on the east by the David L. Lawrence Convention Center, on the south by Liberty Ave, on the west by 6th St, and on the north by Fort Duquesne Blvd.

⁸ City of Pittsburgh, *supra* note 3 at 5; Appeal, *supra* note 2 at 2.

⁹ Appeal, *supra* note 2.

¹⁰ Ibid.

¹¹ Pennsylvania Constitution, Article 8, Section 2 (a)(v); Pennsylvania General County Assessment Law 72 P.S. Section 5020-204(a)(3).

¹² Appeal of the Northwestern Corporation From the Dauphin County Board of Assessment Appeals, 665 A.2d 856 (Pa. Cmwlth. 1995), cited in Pferdehirt, *supra* note 3 at 10.

acquisition of land to ensure...development...consistent with the overall plan of the Trust" constituted the necessary "charitable activity." Following an appeal by the City of Pittsburgh, this opinion was overruled. On June 17, 2009 the final decision by Judge Johnny J. Butler held "the Trust has failed to meet its burden of establishing that [110 9th St is] 'necessary for the occupancy and enjoyment' of the Trust, as required by Assessment Law." The Trust has paid property taxes annually for 110 9th St in accordance with this decision.

110 9th St, the proposed public artwork consisting of an informational plaque and the land contained by the property lines of the parcel 0009-N-00196-0000-00 located at 110 9th St, is designed to respond specifically to Pennsylvania's criteria of "charitable use." Mimicking the legal justification for the registration of art museums as 501(c)(3) tax-exempt institutions, *110 9th St* would perform public "education" while also constituting the charitable "erection...of [a] public monument."¹³ As a site-specific, public artwork encompassing all of 110 9th St, the entire plot would become an "actually and regularly used" "facilit[y] for...visual arts in the City of Pittsburgh" — "necessary for the occupancy and enjoyment" of the Trust. Consequently, realization of *110 9th St* would entitle the Trust to claim 110 9th St as tax exempt, saving the organization \$2,678.09 a year.

Tax exemption determinations exemplify how important a property's "use" can be when defining its legal status. In regulating the legal *ownership* of property, however, "use" has little influence. In fact, scholars of property law often cite the dominance of use-value by exchange-value as a fundamental cause of the contemporary real estate crisis.¹⁴ While Community Land Trusts, which divide homeownership from the possession of land, remain the dominant legal-economic tool for resisting this trend, less common contractual models of tying ownership to use have also been proposed. In his article "Property As Practice: The Collective Landholding Patterns of Black Churches," Architect Gabriel Cuéllar's careful excavation of the Fee Simple Determinable deed does precisely this. Distinct from the standard Fee Simple deed, which bestows unrestricted ownership to grantees, Fee Simple Determinable contracts position continued ownership of purchased property as contingent upon certain restrictions. These restrictive deeds were commonly used in the Reconstruction era by white property holders when transferring land to black congregations. With Reverter Clauses, white sellers restricted black land use to "church purposes and school purposes," prohibiting commercial activities and guaranteeing their automatic reacquisition of title upon any violation of these restrictions.¹⁵ "Freedpeople," Cuéllar writes, "purchased the use of the land; all other interests, such as the right to sell, were precluded by the Reverter Clause."¹⁶

The sale contract of *110 9th St* includes the following Reverter Clause:

¹³ "Charitable Purposes." Internal Revenue Service. December 27, 2024. www.irs.gov/charities-non-profits/charitable-purposes

¹⁴ See Park, K-Sue. "Money, Mortgages, and the Conquest of America." *Law & Social Inquiry* 41, no. 4 (2016): 1006–35. <http://www.jstor.org/stable/26630897>.

¹⁵ Cuéllar, G. A., 2022, "Property As Practice: The Collective Landholding Patterns of Black Churches" (chapter) *Unsettled Urban Space: Routines, Temporalities, and Contestations*. Knierbein, S., Kränzle, E. & Wall, E. (eds.), p. 180.

¹⁶ Ibid.

Said WORK is non-transferable. It is to be used for public, charitable purposes. The TRUST agrees to apply for tax exemption for the 110 9th St property (Parcel ID: 0009-N-00196-0000-00) within 30 days of the installation of the PLAQUE. Within 30 days of the date of receipt of tax exemption for 110 9th St (EXEMPTION DATE), the TRUST agrees to donate \$2,678.09 to the Hill Community Development Corporation and earmark this donation as “reserved for the exclusive use of the Hill Community Land Trust.” The TRUST agrees to repeat this donation annually. The TRUST agrees that donations in the years subsequent to the first donation will be made on or before the calendar date 30 days after the anniversary of the EXEMPTION DATE. These agreements shall apply in perpetuity. It is understood and stipulated that in event said WORK shall cease to be used for public, charitable purposes, or any other agreement in this clause is not met, this said WORK shall revert to the grantor or his heirs.

This clause frames the Trust's ownership of *110 9th St* as contingent upon its charitable use — guaranteeing the eligibility of *110 9th St* for tax exemption under current Pennsylvania law. It also establishes an ongoing relationship of support between the Trust and the Hill Community Land Trust. As a result, this Revert Clause extends the operation of *110 9th St* beyond the Downtown Pittsburgh Cultural District (fig. 4). In the context of the Trust's mission to “...maintain and manage land and buildings...in connection with the planning, creation, development, operation, and administration of *one or more cultural districts* within the City of Pittsburgh..” (emphasis added), *110 9th St* asserts the Lower Hill's continued status as a “cultural district” worthy of direct support from the Pittsburgh Cultural Trust.

Proposed language for the plaque component of *110 9th St* is reproduced on the following page.

110 9th St

Approximately 2,000 feet east of this site, Downtown Pittsburgh borders the Lower Hill District, Pittsburgh's first free black neighborhood. Following an influx of black residents during the Great Migration, the Lower Hill became a regional hub for black culture. The Hill contained over a dozen music venues that hosted jazz legends like Miles Davis, John Coltrane, Lena Horne, Dizzy Gillespie, Sarah Vaughan, and Duke Ellington. However, when the Home Owners Loan Corporation produced a "Residential Security" map of Pittsburgh in 1937, the Lower Hill District was redlined — receiving a "D" grade due to its "concentration of negro and undesirables." The Lower Hill soon became a target of Pittsburgh's urban renewal. Identifying the neighborhood as a "slum," the Pittsburgh Urban Redevelopment Authority (URA) used the government power of eminent domain to seize and clear 95 acres in 1956, displacing around 8,500 residents. Among the demolished buildings were several religious institutions, including Pittsburgh's first black church, Bethel AME, which served as a stop on the Underground Railroad. Where these buildings once stood, the city built the Civic Arena, which housed Pittsburgh's Civic Light Opera, and the I-579 freeway, which cut off the Hill from Downtown Pittsburgh. The legacy of this violent displacement is still tangible. In 2020, the Lower Hill District was home to only 3,041 residents, less than 15% of its 1950 population of 22,479.

In the years following the destruction of the Lower Hill District, the Downtown area benefited from renewed investment and revitalization in what came to be called the "Pittsburgh Renaissance." In 1971, a coalition that included the URA completed reconstruction of the historic Loew's Penn Theatre, rechristening it Heinz Hall. In 1984, this coalition went on to found the non-profit Pittsburgh Cultural Trust, whose mission is "to acquire, build, restore, replace, preserve, maintain and manage land and buildings and any other interest in real and personal property... in connection with the planning, creation, development, operation, and administration of one or more cultural districts within the City of Pittsburgh." The Trust's first major project was the restoration of the Stanley Theatre, renamed the Benedum Center at its opening in 1987. The Civic Light Opera, a beneficiary of the clearance of the Lower Hill, relocated from the Civic Arena to Heinz Hall in 1972, then to the Benedum Center in 1988. Both Heinz Hall and the Benedum Center are registered historic landmarks with the Pittsburgh History & Landmarks Foundation.



In 2000, the Pittsburgh Cultural Trust purchased this plot at 110 9th St from Star Realty Co for \$3,300,000. Between 2006 and 2009, a series of applications, appeals, and rulings debated the nature of this property's use in order to determine its eligibility for exemption

from property taxes. The final ruling in 2009 held the Trust had not demonstrated “charitable use” of this land and was therefore ineligible to exempt 110 9th St from taxation. On February 6, 2025, the Pittsburgh Cultural Trust announced plans to convert the entire block containing 110 9th St into a civic space named “Arts Landing.” The Trust broke ground on the project on April 29, 2025, rendering this site newly eligible for exemption from all property taxes.

On _____, 202_ artist Harrison Kinnane Smith erected this plaque and established the entire plot of 110 9th St as *110 9th St*, a public artwork owned and managed by the Pittsburgh Cultural Trust. By performing the charitable work of public education, *110 9th St* contributes to the eligibility of 110 9th St for exemption from property taxes. As stipulated in the sale contract signed by Smith and the Trust, the non-profit applied to exempt 110 9th St from taxation within 30 days of this plaque’s installation. Within 30 days of receiving tax exemption for the property, the Trust began annually donating its previous tax debt of \$2,678.09 to the Hill District Community Development Corporation’s nascent community land trust, an organization tasked with providing affordable housing in the Hill District. So long as the Trust carries out these annual donations, it is authorized to exhibit this plaque in perpetuity. By providing ongoing support of an affordable housing organization in the Hill District, *110 9th St* extends the Pittsburgh Cultural Trust’s execution of its mission to “restore, replace, and preserve...land and buildings” to the erased “cultural district” that is the Lower Hill.

Addendum

Judge Butler's 2009 ruling on the ineligibility of 110 9th St for tax exemption cites two legal precedents in the state of Pennsylvania regarding the scope of "charitable use" with regards to the development and renovation of unused real property held by charitable institutions. In 1996, the Pennsylvania Supreme Court ruled that "charitable use" required for real property to earn tax exempt status may be interpreted to include the mere construction of facilities.¹⁷ That same year, the Commonwealth Court of Pennsylvania held that "construction" may be interpreted to include a charitable organization's retention of an architect and solicitation of bids for renovation of real property.¹⁸

On February 6, 2025, the Pittsburgh Cultural Trust announced plans to convert the entire block containing 110 9th St into a public park and arts space named "Arts Landing." The Trust broke ground on the project on April 29, 2025. According to legal precedent, the planning and construction of the Trust's "Arts Landing" project entitles the organization to tax exemptions for 110 9th St and neighboring parcels associated with the development. Though the "Arts Landing" project renders the proposed *110 9th St* artwork's intended legal intervention on the use status of 110 9th St unnecessary, the work's inclusion in public art programming for "Arts Landing" would nonetheless contribute to the "charitable use" and tax exempt eligibility of the site.

¹⁷ Overmont Corporation v. Board of Tax Revision of the City of Philadelphia, 380 A.2d 311 (Pa. 1978)

¹⁸ Senior Citizen Health Care Council of Erie County v. Board of Tax Assessment Appeals of Erie County, 678 A.2d 430 (Pa. Cmwlth. 1996)



Figure 1. Rendering of the proposed informational plaque component of the *110 9th St* artwork, modeled on markers used by the Pennsylvania Historical and Museum Commission. Image credit: Jono Coles.



Figure 2. 110 9th St. Image captured November 2024. © Google.

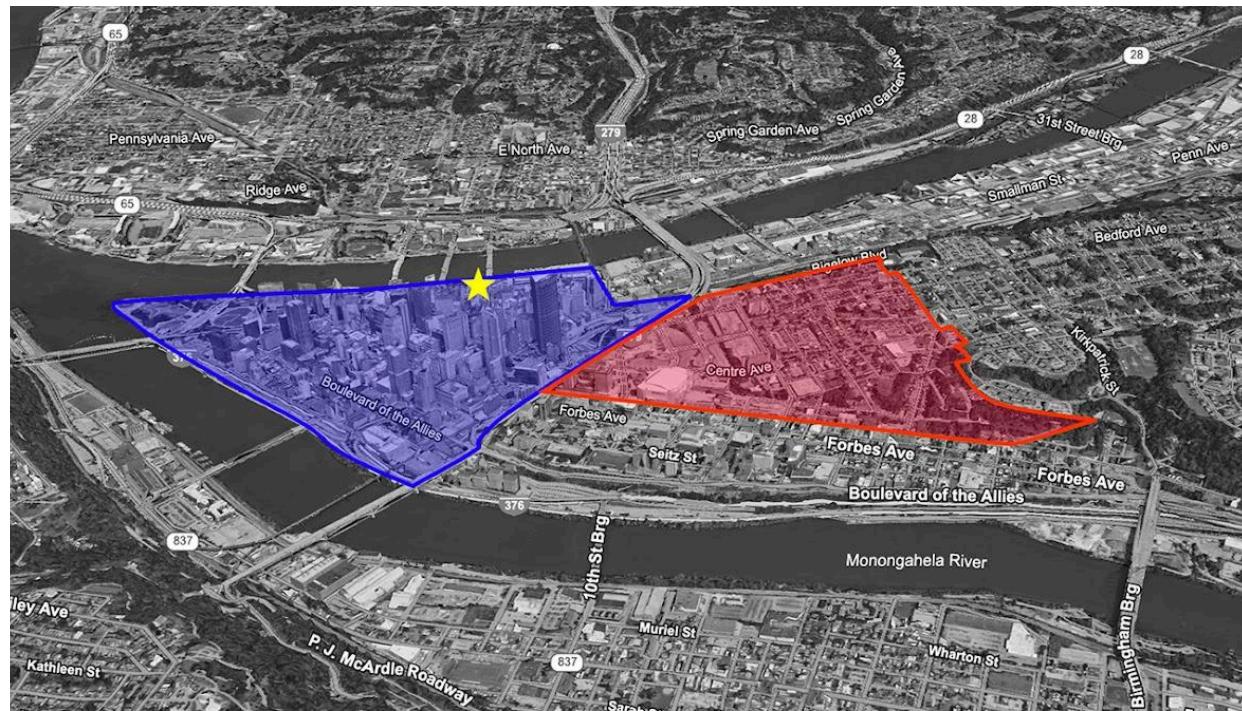


Figure 3. Map of Pittsburgh showing the Downtown area shaded in blue and the adjacent Lower Hill District shaded in red. The location of 110 9th St is indicated with a yellow star.



Figure 4. Satellite view of the eastern end of Downtown Pittsburgh's designated Cultural District. 110 9th St. is shown shaded red. Other properties owned by the Pittsburgh Cultural Trust are shown outlined in red. The Benedum Center for the Performing Arts, owned by the City of Pittsburgh but managed by the Cultural Trust, is shown at the bottom of the image outlined in blue. © Allegheny County, Pennsylvania.

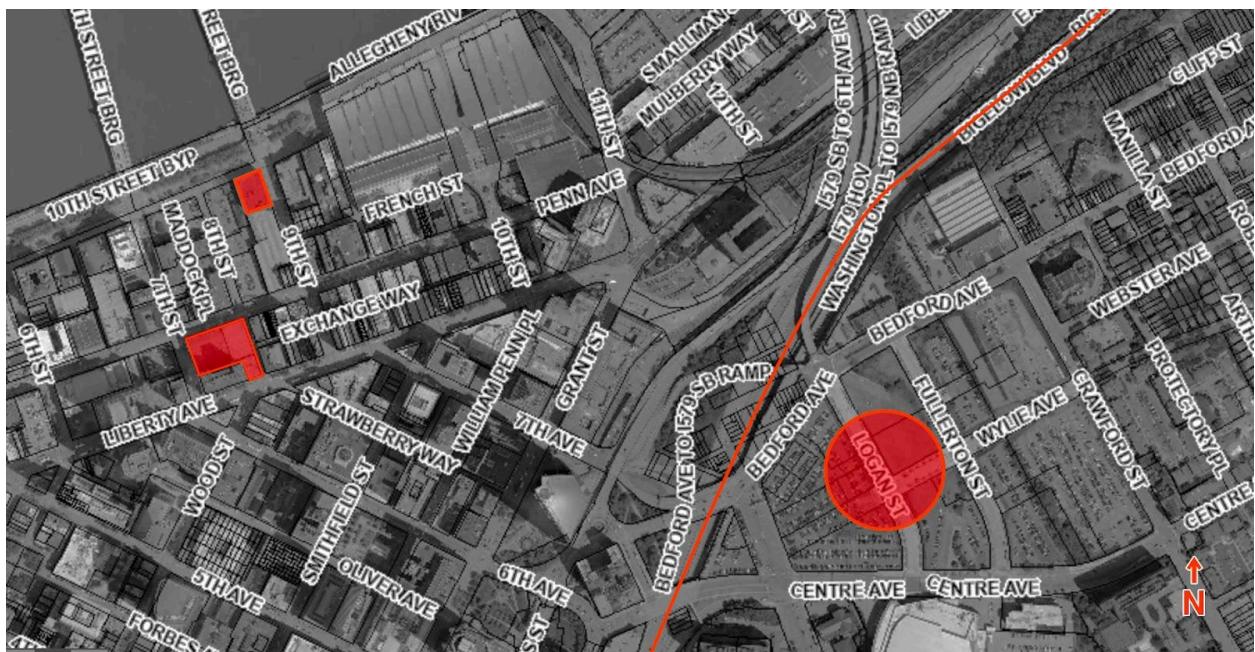


Figure 5. Satellite view of the border between Downtown Pittsburgh and the Lower Hill District. Highlighted in red from north to south are: 110 9th St.; the Benedum Center for the Performing Arts at 237 7th St.; and the former site of the Civic Arena. © Allegheny County, Pennsylvania.



Figure 5. "Looking northeast toward Connelley Trade School, from cleared area of the Lower Hill redevelopment" (c. 1957-1959) by Charles "Teenie" Harris. © Carnegie Museum of Art, Pittsburgh



Figure 6. Looking northeast toward Connelley Trade School from Logan St.
Image captured November 2024. © Google.

Appendix

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9-N-196 Allegheny County Office of Property Assessment Field Packet	62

110 9th St Parcel Details

Address.....	110 9th Street, Pittsburgh PA 15222
Address (Allegheny County Real Estate Portal Listing).....	9th Street, Pittsburgh PA 15222
Block & Lot Number.....	9-N-196
Parcel ID.....	0009-N-00196-0000-00
Legal Description.....	Lot #2 148.45 x 100 x 100.23 x 142.97
Municipality.....	102 2nd Ward - Pittsburgh
Owner Name.....	Pittsburgh Trust for Cultural Resources (The)
Class.....	Commercial
Use Code.....	Vacant Commercial Land
Neighborhood Code.....	51C01
Lot Area.....	29,208 SQFT
2025 Full Base Year Market Value	\$425,000
Building Value	\$0
Total Value.....	\$425,000
Net Tax Due April 30, 2025	\$2,678.09
Millage Rate	6.43

**OFFICE OF PROPERTY ASSESSMENTS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

APPLICATION FOR EXEMPTION OF REAL ESTATE TAXATION

An application is hereby made in accordance with Chapter 209, Section 209.04 (f) of the Administrative Code of Allegheny County to have the subject property placed in the Exempt category for real estate taxation purposes for:

TAX YEAR: 2006

In order to qualify for exemption, the property must be owned on January 1st of the year in which the tax exemption is being requested.

In accordance with Chapter 207, Section 207.08 of the Administrative Code, Exemption Applications must be postmarked on or before March 31st. In the event March 31st falls on a holiday or a weekend, the Exemption Application may be filed until the close of business on the next regular business day.

A determination will be made as to whether the subject property qualifies for property tax exemption in accordance with the General County Assessment Law, 72 P. S. Section 5020-204; The Institutions of Pure Public Charity Act, 10 P.S. Section 371 et seq.; and relevant case law.

If the Application is being filed by a representative of the owner (attorney, trustee, officer, board member, etc) please provide proper documentation (i. e., a letter giving power of attorney) giving such authorization to file. This documentation must be attached to the Application.

FOR OFFICE USE

DATE RECEIVED:

ASSIGNMENT NUMBER:

10:3 PM 3 MAR 90
PROPERTY ASSESSMENT
DEPARTMENT
ALLEGHENY COUNTY

PREPARE SIX COPIES OF THIS APPLICATION

Applicant must serve one copy to the County Law Department, the Municipality,
and to the School District

One original and one additional copy to the Office of Property Assessments
One copy to be retained by the Applicant

RETURN TO OFFICE OF PROPERTY ASSESSMENTS
400 NORTH LEXINGTON AVENUE
PITTSBURGH PA 15208

TELEPHONE (412) 473 - 3166

All information requested herein must be supplied. In the event that the space provided is not sufficient, please provide your answers on a separate sheet of paper. All documentation should be attached to the Application.

Please note that all additional documentation must be included in each copy of the Application.

1. Name and Address of subject property 110 9th Street
Pittsburgh, PA 15222

2. Block & Lot Number 9-N-196

1(a). Municipality Pittsburgh Ward (if applicable) 2nd

1(b). Name of Legal Owner The Pittsburgh Trust for Cultural Resources

1(c). Name of Equitable Owner, if any N/A

3. Notice concerning this application to be sent to:

Name: William P. Bresnahan

Acting in capacity of: (Owner, Representative, Counsel, Agent)

Address: 330 Grant Street

Suite 2901

Pittsburgh, PA 15219

Telephone No. (412)-355-7070 () _____

Fax No. (412)-281-6099

4. Is an assessment appeal pending on the subject property? Yes

If yes, give date filed. March 31, 2006

4(a). Is the subject property in court proceedings? Yes

5. Date of acquisition of subject property by applicant.

Day 26th Month October Year 2000

Set forth Deed Book Volume and Page of Deed or Instrument by which subject property was acquired.

Deed Book Vol. 10899 Page 487

5(a). Attach a copy of the Deed by which the subject property was acquired.
see attached

6. Has the subject property been consolidated or subdivided recently into a new lot plan? No If "Yes", attach plan and recite the plan book volume and page.

N/A

7. Give the day, month and year that ACTUAL USE for the purported EXEMPT purpose began. January 1, 2006

7(a). If the subject property is not in ACTUAL USE, give the date that it will be used for purported exempt purpose(s). N/A

8. Describe in full detail how the subject property is currently being used.

- * If a partial exemption is being requested, please provide accurate square footage of the exempt portion of the building(s) and/or area.
- * If the property is being renovated or constructed, provide documentation for intended use. (Architecture bids, surveys, maps, etc.)
- * If usage of the property is church parking, please reference any additional church related activities held on the parking area.

see attached

9. Is any portion of the subject property used as a place of residence? No

If "Yes" describe this use.

N/A

10. Is any portion of the subject property rented, leased or occupied by anyone other than the owner? No
If "Yes", attach a sheet listing the names, addresses, phone numbers and contact persons for each occupant with the amount of space occupied, the amount of rent or other payment, which is made for occupancy, the use of the occupied space, and whether there is any written lease, letters agreement or memo reciting the terms of the occupancy shall be attached.
11. If applicable, attach a copy of the Charter, By-Laws, Constitution or any other documentation indicating a non-profit use of the subject property.
see attached
11(a). Attach copies of all relevant financial information regarding the subject property, including but not limited to: income and expense statements, balance sheets, 990 Forms, 501(c)(3) tax status designation Forms or any other applicable IRS tax exempt form(s).
see attached
12. Sketch of Property
A sketch or survey of the land should be submitted showing the outside dimensions of the land and relative positions of buildings or structures thereon, giving the names of all roads, highways and streets on which said land abuts. If adjoining land belongs to applicant, so indicate.
see attached
12(a). The applicant should also submit photos of the subject land.
to be provided
13. STATEMENT OF SERVICES OF THE APPLICATION:

13(a). **The Allegheny County Department of Law was served at:**

Allegheny County Department of Law
300 Fort Pitt Commons Building
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

on 3/31, 2006, by hand delivery or mail.

13(b). The name of the municipality, and the address where service was made is as follows:

Ronald H. Pferdehirt, Esquire
Assistant Solicitor of the City of Pittsburgh
313 City-County Building
Pittsburgh, PA 15219

on 3-31, 20 06, by hand delivery or mail.

13(c). The name of the school district and the address where service was made is as follows:

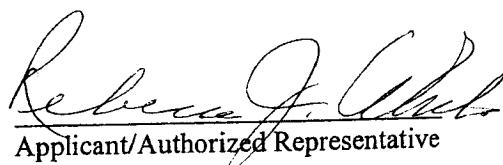
Ira Weiss, Esquire
Solicitor, City of Pittsburgh, School District
503 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

on 3-31, 20 06, by hand delivery or mail.

SIGNATURE AND OATH

Under penalties of perjury, I declare that I have examined this application, including all other data submitted regarding the property and the exemption from taxation thereof, and to the best of my knowledge and belief it is true, correct and complete.

Date 3/30/06


Rebecca J. Clark
Applicant/Authorized Representative



DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF PROPERTY ASSESSMENTS

County of Allegheny

347 COUNTY OFFICE BUILDING • 542 FORBES AVENUE
PITTSBURGH, PA 15219
PHONE (412) 350-4600 • FAX (412) 350-6084

DAN ONORATO
CHIEF EXECUTIVE

TIMOTHY H. JOHNSON
DIRECTOR

MICHAEL J. SULEY, CRB, CRS
MANAGER

NOTICE OF DETERMINATION OF TAX STATUS

Pittsburgh Trust for Cultural Resources
803 Liberty Avenue
Pittsburgh, Pa 15222

Mailing Date: December 22, 2006

Block & Lot: 9-N-196
Owner Name: Pittsburgh Trust for Cultural Resources
Property Location: 110 Ninth Street
Municipality: City of Pittsburgh
School District: City of Pittsburgh
Year: 2006
Application # 19091

This letter is to inform you that the Office of Property Assessments (OPA) has determined that the above referenced parcel does not qualify for a Real Estate Tax Exemption for the above year and subsequent years for the following reason(s):

The property is not being used for charitable purposes under the General County Assessment Law, 72 P.S. Section 5020-204(a)(3)

Please be advised that you have the right to appeal OPA's determination by filing a **SPECIAL APPEALS FORM** with the Board of Property Assessment Appeals and Review ('Appeals Board') within 30 days of the mail date of this notice. You can obtain an appeal form from the Office of Property Assessments, located at 334 County-Office Building, Pittsburgh, Pa 15219-Phone 412-350-4600 or download the form from the Allegheny County Website at www.county.allegheny.pa.us. A copy of this notice must be attached to the completed **SPECIAL APPEALS FORM** and sent to the Board at 345 County Office Building, Room 347, Pittsburgh, Pa 15219

For additional information, contact the coordinator for this program at: 412-473-3166.

Sincerely,

Mark V. Connolly, CPE
Programs Coordinator

Copies: Owner

School District

Municipality

Office

Law Department

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

APPEAL OF THE CITY OF
PITTSBURGH FROM THE ACTION OF
THE BOARD OF PROPERTY
ASSESSMENT APPEALS AND
REVIEW OF ALLEGHENY COUNTY IN
REGARD TO PROPERTY OWNED BY
THE PITTSBURGH TRUST FOR
CULTURAL RESOURCES, SITUATE IN
THE 2ND WARD OF THE CITY OF
PITTSBURGH

BLOCK AND LOT NOS. 9-N-196 and
2-A-25

INTERESTED PARTIES:

COUNTY OF ALLEGHENY
SCHOOL DISTRICT OF PITTSBURGH
THE PITTSBURGH TRUST FOR
CULTURAL RESOURCES.

CIVIL DIVISION

NOS. GD 07-024913 and
GD 07-024916

BRIEF OF THE CITY OF PITTSBURGH
IN OPPOSITION TO TAX EXEMPTION

Filed on Behalf of:
CITY OF PITTSBURGH

Counsel for Record for this Party:

Ronald H. Pferdehirt
Deputy City Solicitor
Pa. I.D. #25056

George R. Specter
City Solicitor
Pa. I.D. #01017

Department of Law
City of Pittsburgh
Firm #046
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

(412) 255-2043

D
08 APR 15 AM 10:09
ALLEGHENY COUNTY
CLERK'S OFFICE

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

APPEAL OF THE CITY OF PITTSBURGH) CIVIL DIVISION
FROM THE ACTION OF THE BOARD OF)
PROPERTY ASSESSMENT APPEALS) NOS. GD 07-024913 and
AND REVIEW OF ALLEGHENY COUNTY) GD 07-024916
IN REGARD TO PROPERTY OWNED BY)
THE PITTSBURGH TRUST FOR)
CULTURAL RESOURCES)

BLOCK AND LOT NOS. 9-N-196 and
2-A-25

**BRIEF OF THE CITY OF PITTSBURGH
IN OPPOSITION TO TAX EXEMPTION**

FACTS

The two appeals pending before this Court were filed by the City of Pittsburgh (the "City") to challenge the determination by the Board of Property Assessment Appeals and Review of Allegheny County (the "Board") that the two parcels of real property in question (the "subject properties"), owned by the Pittsburgh Trust for Cultural Resources (the "Trust"), qualify for exemption from local real estate taxes. The subject properties are both located in the Second Ward of the City of Pittsburgh and are identified as 110 Ninth Street, block and lot 9-N-196, and 820 Liberty Avenue, block and lot 2-A-25.

The following summary of the salient facts for each parcel is based upon the testimony of Mr. David R. DeSimone, Senior Vice-President of Operations

and General Counsel for the Trust, at a deposition on February 13, 2008, as well as the exhibits attached to the appeals filed on behalf of the City. The facts are relatively simple and uncontested.

First, in regard to 110 Ninth Street, the Trust purchased said property for consideration of \$3,300,000 in October, 2000. Prior to the purchase, the property was the site of a trade school operated by Duff's Institute. There are five floors in the building and the building consists of approximately 33,000 square feet of space. Since the date of acquisition, the building has been entirely vacant and, in the words of Mr. DeSimone, has been held "in a mothball condition." The Trust has been engaged in negotiations with Concord East Ridge Limited Partnership, a for-profit entity based in Arizona and Washington, D.C., to eventually develop the property as part of the so-called "River Park Plan" development. After the existing building is demolished, it is anticipated that Concord will construct a new high-rise building with retail establishments occupying the ground level and condominiums above. Until a deal with the proposed developer is negotiated and finalized, the status of the property may be described as being "in a holding pattern." Since it is expected that the footprint of the new building will not occupy the entire site, the Trust may retain ownership to a portion of the parcel for the purpose of establishing a public park. Since acquiring 110 Ninth Street, the Trust has made no capital improvements to the property but has performed standard maintenance. Despite the sale price of \$3,300,000, 110 Ninth Street is currently assessed at \$2,100,000.

The second property in question is located at 820 Liberty Avenue and is identified as block and lot 2-A-25. The Trust purchased this building from Leon Thorpe and Larry Deitch in November, 2002 for consideration of \$675,000.00. At the time of the purchase a 24-hour check cashing facility and a Chinese restaurant leased the first floor. The upper floors were vacant. There are five floors in the building and 17,750 square feet of space. As part of the sale transaction, the leases with both tenants were assigned to the Trust. The lease to the restaurant expired in 2004 and the lease to the check cashing facility expired in 2006. Neither lease was renewed by the Trust and the first floor remains vacant. The Trust has no specific plans for the future use of this property and admittedly purchased it for the sole reason of eliminating the business uses on the first floor which it characterizes as "noxious uses." Following the termination of the lease with the check cashing facility in 2006, the Trust began to allow a group of college students in the master of fine arts program at Carnegie-Mellon University to use the first floor pursuant to a license agreement to make presentations four times per year. Since the date of acquisition, the Trust has made no capital improvements to the building and any investment of funds has been limited to basic maintenance to address any safety concerns. Despite the purchase price of \$675,000, the building is currently assessed at \$211,356.

Pursuant to the applicable provisions of the Administrative Code of Allegheny County, the Trust filed exemption applications with the Office of Property Assessments ("OPA") in 2006 for both 820 Liberty Avenue and 110 Ninth Street. By a Notice of Determination of Tax Status mailed on January 3, 2006, OPA notified the Trust and each of the taxing bodies of its determination that 43% of 820 Liberty Avenue qualified for exemption and that 57% would be deemed taxable for the year 2006 and subsequent years. Likewise, pursuant to a Notice of Determination of Tax Status mailed on December 22, 2006, OPA notified the Trust and each of the taxing bodies of its determination that 110 Ninth Street does not qualify for exemption. The Trust appealed OPA's determination on each of the subject properties by filing a request for a hearing with the Board.

Following a hearing conducted by a member of the Board on October 4, 2007, the Board issued a written determination dated November 1, 2007 (as subsequently clarified by another letter dated November 8, 2007) that 820 Liberty Avenue was being classified as 91.5% exempt for 2006 and 100% exempt for 2007 and subsequent years, and that 110 Ninth Street was being classified as 100% exempt for 2006 and subsequent years.

Believing the Board's determinations to be incorrect and not supported by any existing case law, the City filed appeals of the Board's decisions in these matters to this Court. The appeal pertaining to 110 Ninth

Street is docketed at No. G.D. 07-024913 and the appeal pertaining to 820 Liberty Avenue is docketed at No. G.D. 07-024916.

Following a status conference conducted by the Court on January 17, 2008, the Court entered an Order directing that depositions of any witnesses be taken within thirty (30) days. Pursuant to said Order, the deposition of Mr. David R. DeSimone was taken on Wednesday, February 13, 2008.

Since the facts are not in dispute, the sole determination for the Court is to decide whether, as a matter of law, the mere ownership of the subject properties by the Trust is sufficient to qualify them for exemption from local real estate taxes, without regard to use and occupancy.

ARGUMENT

SINCE THE TRUST DOES NOT ACTUALLY USE AND OCCUPY THE SUBJECT PROPERTIES, SAID PROPERTIES DO NOT QUALIFY FOR EXEMPTION FROM LOCAL REAL ESTATE TAXES.

The Trust dedicates a significant portion of its briefs relating to these appeals to developing the argument that the Trust qualifies as an institution of purely public charity because it satisfies the criteria established by the Pennsylvania Supreme Court in Hospital Utilization Project v. Commonwealth of Pennsylvania, 507 Pa. 1, 487 A.2d 1306 (Pa. 1985), which criteria were subsequently codified by the General Assembly in the Institutions of Purely

Public Charity Act, Act of November 26, 1997, P.L. 508, No. 55, 10 P.S. § 371 et seq. ("Act 55"). However, since the taxing bodies have been willing to stipulate throughout the course of the proceedings resulting in these appeals that the Trust is an institution of purely public charity, the City sees no need to address the issue any further and will, instead, focus on the crux of the case, which relates to the use and occupancy of the subject properties.

In regard to this issue, Article 8, Section 2 (a)(v) of the Pennsylvania Constitution authorizes the General Assembly to exempt from taxation "Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution." (Emphasis supplied). The General Assembly implemented Article 8, Section 2 of the Constitution by enacting Section 204 (a) (3) of the General County Assessment Law, 72 P.S. § 5020-204 (a) (3), which exempts "hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence, or charity, including fire and rescue stations, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, founded, endowed and maintained by public and private charity." (Emphasis supplied). Thus, in order for real property to qualify for exemption from taxation, the Pennsylvania Constitution and the General County Assessment Law provide that mere ownership by an institution of purely public charity is not sufficient if the

property is not “actually and regularly used for the purposes of the institution” and the property is not “necessary for the occupancy and enjoyment of the same.”

Furthermore, when the General Assembly enacted Act 55 in 1997, it provided for the continued review of individual parcels in Section 5, 10 P.S. § 375 (h), entitled “Parcel review”, which states:

“(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.

(2) Nothing in this act shall prohibit a political subdivision from filing challenges or making determinations as to whether a particular parcel of property is being used to advance the charitable purpose of the institution of purely public charity.”

In regard to the subject properties , the Trust admits that it purchased 110 Ninth Street in order to control the ultimate disposition of the property to a for-profit developer of its choosing for the demolition of the existing building and the construction of a new building which will be occupied by commercial tenants on the first floor and residential condominiums on the floors above. Likewise, the Trust openly admits that it purchased 820 Liberty Avenue solely to terminate the leases of a restaurant and a check cashing facility which

occupied the first floor and that the Trust has no specific plans for the future use of the building.

Although the Trust argues that its acquisition of the subject properties is consistent with its mission and authorized in its Bylaws, Article 1, "Purposes", of said Bylaws specifically provides that, "The purpose of the Pittsburgh Trust for Cultural Resources (the "Corporation") as set forth in its Articles of Incorporation, is to receive, administer and distribute property, real or personal, for exclusively charitable, educational and cultural purposes and to distribute property, real or personal, to or for the use of the Commonwealth of Pennsylvania or any political subdivision thereof for exclusively public purposes." (Emphasis supplied). While the acquisition of properties within that part of downtown Pittsburgh known as the Cultural District in order to control their future use and development by for-profit entities may be desirable, such a use is neither "for exclusively charitable, educational and cultural purposes" nor "for the use of the Commonwealth of Pennsylvania or any political subdivision thereof for exclusively public purposes."

Although the Trust takes the position that the purchase of the subject properties has been approved by its board of directors and is consistent with its Bylaws, any such self-serving characterization of the acquisitions is certainly not binding upon this Court. In fact, in Presbyterian-University of Pennsylvania Medical Center v. Board of Revision of Taxes, 357 A.2d 696

(Pa. Cmwlth. 1976), Commonwealth Court held that while the question of whether property is “necessary for the occupancy and enjoyment” of a charitable institution for purposes of real estate tax exemption is one primarily for its governing board, the courts will not give unlimited deference to the charitable body’s characterization. The Court stated: “We must also be mindful that the city and its taxpayers have an interest in safeguarding the city’s shrinking tax base. Only where land owned by a hospital contributes in a reasonable manner to its function as a hospital, is the exemption justified.” 357 A.2d at 698.

Likewise, in Board of Revision of Taxes of Philadelphia v. United Fund of the Philadelphia Area, 314 A.2d 530 (Pa. Cmwlth. 1973), the Commonwealth Court acknowledged that the actual use of the property, rather than any characterization by the owner or lessee or the use of the proceeds from the property, is the prime consideration which determines whether or not an institution, claimed to be benevolent or charitable, will be granted a real estate tax exemption. In addition, in its decision Commonwealth Court noted that statutory provisions exempting property from taxation are subject to a strict construction, as per the Statutory Construction Act of 1972, Act of November 25, 1972, P.L. 707, as amended, 1 Pa. S. § 1928 (a) (5). See also In the Matter of the Tax Assessment of Real Estate of Greater Erie Economic Development Corporation, 433 A.2d 568 (Pa. Cmwlth. 1981). The Court also stated that since liability of all real estate to taxation is the rule, with exemption being the exception, the burden is placed upon the taxpayer to bring itself clearly within the

parameters of an exemption statute. See also In re Appeal of Pittsburgh NMR Institute, 577 A.2d 220 (Pa. Cmwlth. 1990).

In Appeal of the Northwestern Corporation From the Dauphin County Board of Assessment Appeals, 665 A.2d 856 (Pa. Cmwlth. 1995), Commonwealth Court held that in order to qualify for real estate tax exemption, charitable activity of the entity must occur on the specific property for which exemption is sought, and the entity must own and occupy the property. Thus, the Court stated: "The tax at issue here is not on the activity of the entity wherever its many branches and functions are located, but is a tax based on the value of the parcel of real estate upon which the activity of that entity is located. Thus, it is the charitable activity which occurs on that parcel, and only that parcel, which is relevant." 665 A.2d at 858.

While the City acknowledges that there have been several cases in which a charity may not have actually occupied a property at the time of application but nevertheless qualified for exemption, the facts of those cases are readily distinguishable from the situation confronting this Court. In particular in Overmont Corporation v. Board of Tax Revision of the City of Philadelphia, 380 A.2d 311 (Pa. 1978), the Pennsylvania Supreme Court held that when a charity is engaged in the construction of facilities the charity is actually "using" its property for charitable purposes so as to come within the scope of the General County Assessment Law. Similarly, in Senior Citizen Health Care Council of Erie

County v. Board of Tax Assessment Appeals of Erie County, 678 A.2d 430 (Pa. Cmwlth. 1996), Commonwealth Court held that a charity's act of retaining an architect and soliciting bids for the renovation of an office building constituted "construction" and therefore qualified the property in question for tax exemption. Thus, in both of these cases the institutions which owned the properties in question acquired said properties for the purpose of actually using and occupying them in conjunction with their charitable missions and had begun the process of preparing said properties in order to implement their plans.

In the immediate case, the Trust has never used and occupied, nor will it ever use and occupy, the subject properties. In fact, the Trust has no plan for the future use and development of 820 Liberty Avenue and, as to 110 Ninth Street, the plan is to sell said property to a for-profit developer for the construction of a new building which will include commercial retail space and residential condominiums which will be taxable.

The Trust apparently perceives itself, for purposes of this litigation, as a development agency analogous to the Urban Redevelopment Authority of Pittsburgh ("URA"). However, the Trust conveniently overlooks the fact that the URA is an instrumentality of the Commonwealth of Pennsylvania and that, by virtue of such, all real property which it owns is immune from taxation, regardless of whether such property is being held for future conveyance and development rather than being currently used and occupied.

CONCLUSION

Exemption from taxation is a privilege, not a right, and the Trust has failed to meet its heavy burden of proving that the subject properties qualify for tax exemption under the applicable provisions of the Pennsylvania Constitution, the General County Assessment Law and appellate court case law. Yet, despite said fact, the Board, without explanation or comment, determined to place the subject properties in the exempt classification.

The City is compelled to challenge the Board's grant of tax exemption for the subject properties because the Recovery Plan issued for the City pursuant to the Municipalities Financial Recovery Act, Act of July 10, 1987, P.L. 246, No. 47, 53 P.S. § 11701.101 et seq. ("Act 47") provides that, "the City must monitor applications made to the County's Board of Assessment for exemption from real property taxation. The City must confirm that the proposed use, not just ownership, qualifies for exemption under the applicable law.... This process and these reviews must be continued in order to assume that only properties qualifying for exemption get added to the City's already long list of exempt properties." Recovery Plan for the City of Pittsburgh, page 208 (emphasis in original).

In addition, the Recovery Plan proceeds to require that, "The City Solicitor shall continue its cooperative efforts with the School District's Solicitor: (1) to

review, and challenge where necessary, applications of property owners for exemption from real property taxation; and (2) to review periodically, and challenge where necessary, the status of currently exempt properties, including review of the current use and ownership thereof.” Recovery Plan for the City of Pittsburgh, page 209.

The taxpayers of the City of Pittsburgh are already bearing a disproportionate share of the real estate tax burden due to the heavy concentration of exempt properties within the boundaries of the City. Said taxpayers should not be burdened even further by the removal of the subject properties from the tax rolls when said properties are not being used and occupied by the Trust but rather, are merely being held “in a mothball condition.”

Since the Board’s determination as to the subject properties is clearly contrary to the requirements of the Constitution, the General County Assessment Law and decisions of both the Commonwealth Court and the Pennsylvania Supreme Court, the City of Pittsburgh respectfully requests that this Court conclude that neither 110 Ninth Street nor 820 Liberty Avenue qualify for exemption from taxation and that the Court direct that said properties be returned to the taxable classification for the year 2006 and succeeding years.

Respectfully submitted,

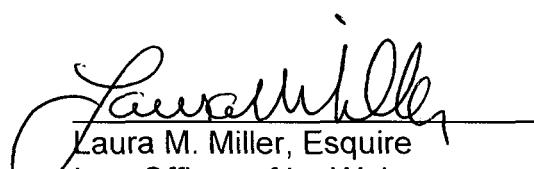


Ronald H. Pferdehimer
Deputy City Solicitor
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/s/ George R. Specter

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City Solicitor
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The School District of Pittsburgh hereby joins in the Brief of the City of Pittsburgh in Opposition to Tax Exemption and respectfully requests that the Court hold that the subject properties do not qualify for exemption from taxation and are therefore taxable.



Laura M. Miller, Esquire
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Counsel to the School District
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing BRIEF OF
THE CITY OF PITTSBURGH IN OPPOSITION TO TAX EXEMPTION has been
served this 15TH day of April, 2008 by United States first class mail, postage
prepaid, upon the following named parties:

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Deputy City Solicitor

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

APPEAL OF THE CITY OF
PITTSBURGH FROM THE
ACTION OF THE BOARD OF
PROPERTY ASSESSMENT
APPEALS AND REVIEW OF
ALLEGHENY COUNTY IN
REGARD TO PROPERTY
OWNED BY THE PITTSBURGH
TRUST FOR CULTURAL
RESOURCES, SITUATE IN
THE 2ND WARD OF THE CITY
OF PITTSBURGH

BLOCK AND LOT NOS.
9-N-196 and 2-A-25

INTERESTED PARTIES:

COUNTY OF ALLEGHENY
SCHOOL DISTRICT OF PITTSBURGH
THE PITTSBURGH TRUST FOR
CULTURAL RESOURCES

CIVIL DIVISION

NOS. GD07-024913
GD07-024916

MEMORANDUM AND ORDER OF COURT

HONORABLE R. STANTON WETTICK, JR.

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MEMORANDUM AND ORDER OF COURT

WETTICK, J.

This Memorandum and Order of Court addresses appeals filed by the City of Pittsburgh challenging the determination of the Board of Property Assessment Appeals and Review of Allegheny County ("Board") that two properties (110 North Street and 820 Liberty Avenue) owned by the Pittsburgh Trust for Cultural Resources qualify for exemption from local real estate taxes. Following a hearing conducted by the Board on October 4, 2007, the Board determined that 820 Liberty Avenue was 91.5% exempt for 2006 and 100% exempt for 2007 and subsequent years and that 110 Ninth Street was 100% exempt for 2006 and subsequent years.

The Cultural Trust was formed in 1984 as a nonprofit corporation to promote economic and cultural growth in a fourteen-block area (now referred to as the *Cultural District*) in Downtown Pittsburgh that included Heinz Hall, the home of the Pittsburgh Symphony.¹ Most of the fourteen-block area was what would be described as the blighted area of Downtown. Since 1984, this area has been transformed into a "Cultural District" with fourteen cultural facilities, parks and plazas, and numerous commercial developments.

¹The Trust has been designated as a 501(c)(3) organization by the Internal Revenue Service.

Through the acquisition and renovation of properties in the Cultural District, the Trust has been responsible for the conversion of a large dilapidated movie theater into a center for the performing arts with approximately 2,800 seats (Benedum Center), the renovation of another large movie theater into a venue for the performing arts with 1,350 seats (Byham Theater), the construction of a theater for the Pittsburgh Public Theater with 650 seats (O'Reilly Theater), the construction of a cabaret theater (250 seats), and the conversion of a dilapidated movie theater showing pornographic films into a venue for nonprofit art organizations to show "art" films. These theaters, all within the Cultural District, are in close proximity to each other in accordance with the plan to turn the fourteen-block area into an attractive site for cultural and economic development.

Under Article 1 (Purposes) of the Bylaws of the Pittsburgh Trust for Cultural Resources, the purposes for which the corporation is formed include:

- (a) to acquire, build, restore, replace, preserve, maintain and manage land and buildings and any other interest in real and personal property of any kind or description whatsoever in connection with the planning, creation, development, operation, and administration of one or more cultural districts within the City of Pittsburgh or any facilities for use in the performing or visual arts in the City of Pittsburgh;
- (b) to plan, create, develop, operate and administer, and to assist and cooperate with others in the planning, creation, development, operation and administration of, any such cultural district facilities for use in the performing or visual arts in the City of Pittsburgh, including any real or personal property, services and accommodations ancillary thereto;
- (c) to participate in the economic rejuvenation and development of the area of the City of Pittsburgh in which any such cultural district or facilities for use in the performing or visual arts are located and the environs of such area, including conducting studies and making grants or capital expenditures for charitable, educational or cultural events and for plantings, sidewalks, signs and other public ornamentation relating to the use and enjoyment of such area by the public;
- (d) to acquire, build, restore, replace, preserve, maintain and manage historical monuments, landmarks, buildings, sites, locations and objects in the area of the City of Pittsburgh in which any such cultural district is located, and to operate and administer, and assist and cooperate with others in the operation and administration of, any such historical monuments, landmarks, buildings, sites, locations and objects, together with ancillary facilities, services and accommodations;

Most of the Trust's Brief addresses the issue of whether the Trust qualifies as an institution of purely public charity. However, the taxing bodies have stipulated that it is an institution of purely public charity.

The City of Pittsburgh contends that the property is taxable because Article 8, §2(a)(v) of the Pennsylvania Constitution authorizes the General Assembly to exempt from real property taxation only the portion of real property owned by an institution of purely public charity which is actually and regularly used for the purposes of the institution. Brief of the City of Pittsburgh in Opposition to Tax Exemption, at 7.

820 LIBERTY AVENUE

The Trust purchased the property at 820 Liberty Avenue in November 2000. At the time of purchase, a twenty-four hour check cashing facility and a Chinese restaurant leased the first floor. The remaining four floors were vacant. These leases for the restaurant and check cashing facility have expired. The Cultural Trust did not renew these leases.

At the same time the Cultural Trust acquired the 820 Liberty Avenue property, it also acquired an adjoining property owned by the same owner. The adjoining property was used for an adult use (Deposition of David R. DeSimone 2/13/08 at 27).

The owner of these properties approached the Cultural Trust saying that the lease of this property for adult use was ready to expire and the owner intended to renew the lease for another ten years unless the Trust purchased both properties at a value based on a capitalization of rent that was higher than market rent because these were nonconforming uses (Dep. T. at 27-28).

The Liberty Avenue properties were purchased with foundation money. Presently, the ground floor of 820 Liberty Avenue is being used, at no fee, by Carnegie-Mellon University students in the master of fine arts program—it is one of ten to fifteen locations of the “Gallery Crawls” (Dep. T. at 13-14). The remaining floors are unoccupied.

David R. DeSimone, Senior Vice-President of Operations and General Counsel for the Trust, testified that presently the building is in a holding pattern. There are no specific plans to expand its use for the arts. The Trust’s main reason for acquiring the property was to eliminate the nonconforming uses that interfered with private investment.² These properties, particularly the adjacent property, were incompatible with the desired development of the area.

I find that the 820 Liberty Avenue property is exempt because the purposes for which the Trust was created are furthered by the removal (through the acquisition of 820 Liberty Avenue and the adjacent property) of nonconforming uses that are inconsistent with the development of the area. Furthermore, the Trust furthers its charitable purposes by making the only usable portion of 820 Liberty Avenue available for the arts.

There is no profit motive because the Cultural District did not renew leases of tenants willing to make rental payments based on the value of the properties as nonconforming uses.

²For the adjacent building, the Trust has spent (with grants from foundations) several hundred thousand dollars to put in a Gallery and renovate the facade (Dep. T. at 29).

110 NINTH STREET

The Trust purchased the 110 Ninth Street property for \$3.3 million in October 2000. Prior to the purchase, the property was the site of a trade school. This is a five-story building with approximately 33,000 square feet of space. The property has been vacant since the date of acquisition and it is not habitable for commercial or residential purposes without extensive renovations that may exceed the construction costs of a new building.

Mr. DeSimone testified that the Cultural Trust purchased the 110 Ninth Street property as a strategic acquisition to support the eventual creation of a mixed-use development along Ft. Duquesne Boulevard up to Penn Avenue. It acquired the property in order to prevent its use in a manner that is incompatible with a proposed riverfront park development that will create a walkable, environmentally sustainable neighborhood that attracts people to live, work, and play in the Cultural District and draws additional people into this District.

The Trust's goal is to sell the property to a private developer that will tear down the existing building and develop the property in a manner consistent with a river park plan. The sales price to the developer will not be based on the property's highest and best use but, instead, upon the use that the Cultural District dictates. The footprint of the new building will not occupy the entire site, and it is anticipated that the Trust will retain ownership of the remainder of the parcel for the purpose of establishing a public park.

The recent opinion of the Pennsylvania Supreme Court in *Home of Carlisle v. Board of Assessment*, 919 A.2d 206 (2007), held that any property owned by an

institution of purely public charity³ qualifies for a tax exemption as long as the property "is actually and regularly used for the purposes of appellant's institution as a whole, i.e., the purpose for which appellant [the institution] is organized and operated." *Id.* at 218.

I find that the 110 Ninth Street property is tax exempt. The Trust is an institution of purely public charity and the purposes for which the Trust is organized and operated include the acquisition of land to ensure that its development is consistent with an overall development plan for the Cultural District. There is no profit motive in the acquisition of the property. It was acquired (with foundation funds) at what appears to be a higher price than its fair market value and in all likelihood it will be sold for a price less than fair market value because of the restrictions that will be placed on the development of the property.

CONCLUSION

In the present case, the acquisitions and other activities of the charitable trust have transformed what was a blighted area of the Downtown by creating attractive settings for the cultural activities of the City of Pittsburgh and for residential and commercial development. There is no evidence that refutes the testimony of the Cultural Trust that as a result of its activities, the tax base within the Cultural District has increased while the arts have expanded and flourished.

³Subsection (a)(9) of 72 P.S. §5020-204 exempts from all county, city, borough, town, and township taxation: "All real property owned by one or more institutions of purely public charity, used and occupied partly by such owner or owners and partly by other institutions of purely public charity, and necessary for the occupancy and enjoyment of such institutions so using it." Subsection (b) of 72 P.S. §5020-204 states that "all property real or personal, other than that which is actually and regularly used and occupied for the purposes specified in this section . . . shall be subject to taxation."

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

APPEAL OF THE CITY OF
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BLOCK AND LOT NOS.
9-N-196 and 2-A-25

INTERESTED PARTIES:

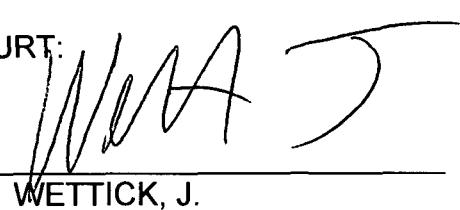
COUNTY OF ALLEGHENY
SCHOOL DISTRICT OF PITTSBURGH
THE PITTSBURGH TRUST FOR
CULTURAL RESOURCES

NOS. GD07-024913
and
GD07-024916

ORDER OF COURT

On this 4 day of September, 2008, it is ORDERED that (1) the 820 Liberty Avenue Property is 91.5% exempt for 2006 and 100% exempt for 2007 and subsequent years and (2) the 110 Ninth Street Property is 100% exempt for 2006 and subsequent years.

BY THE COURT:



WETTICK, J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Appeal of the City of Pittsburgh from
the Action of the Board of Property
Assessment Appeals and Review of
Allegheny County in regard to
Property owned by the Pittsburgh
Trust for Cultural Resources,
Situate in the 2nd Ward of the City
of Pittsburgh

Block and Lot No. 2-A-25

County of Allegheny
School District of Pittsburgh
The Pittsburgh Trust for Cultural
Resources

Appeal of: City of Pittsburgh

Appeal of the City of Pittsburgh
from the Action of the Board of
Property Assessment Appeals and
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Pittsburgh Trust for Cultural Resources,
Situate in the 2nd Ward of the
City of Pittsburgh

Block and Lot No. 9-N-196

County of Allegheny
School District of Pittsburgh
The Pittsburgh Trust for Cultural
Resources

Appeal of: City of Pittsburgh

GD 07-24916

No. 1931 C.D. 2008

GD 07-24913

No. 1932 C.D. 2008

Argued: May 6, 2009

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION BY
JUDGE BUTLER

FILED: June 17, 2009

The City of Pittsburgh (City) appeals from the September 4, 2008 order of the Court of Common Pleas of Allegheny County (trial court) exempting two properties owned by The Pittsburgh Trust for Cultural Resources (Trust), located at 820 Liberty Avenue and 110 Ninth Street, from local real estate taxes. The issue before us is whether these properties qualify for tax exemptions when they are neither currently used nor occupied by the Trust. For the reasons stated below, we reverse the decision of the trial court.

The Trust is a Pennsylvania non-profit corporation founded in 1984 to promote economic and cultural growth in what was formerly a blighted 14-block area of downtown Pittsburgh, now known as the Cultural District. It was founded under the joint sponsorship of the Allegheny County Conference on Community Development, the Howard Heinz Endowment, and the Pittsburgh Foundation, with the support of the City and the County of Allegheny. The Trust is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and is exempt from Pennsylvania sales tax.

According to its bylaws, the purpose of the Trust “is to receive, administer and distribute property, real or personal, to or for the use of the Commonwealth of Pennsylvania or any political subdivision thereof for

exclusively public purposes.” To that end, in October of 2000, the Trust purchased the 110 Ninth Street property, which consists of a vacant five-story building. It is not habitable for commercial or residential purposes without extensive renovations. The property was purchased in order to prevent its use in a manner that is inconsistent with a proposed mixed-use development along Fort Duquesne Boulevard up to Penn Avenue. The Trust intends to have the building torn down in anticipation of development by a private developer within a year or two. If the new building does not occupy the entire site, the Trust plans to retain a parcel of it for a public park. Architects were retained in furtherance of the proposed project; however, according to counsel at argument, the deal with the original developer has fallen through, so the project is now on hold.

In November of 2000, the Trust purchased the five-story 820 Liberty Avenue property whose only tenants at the time were a Chinese restaurant, and a 24-hour check cashing facility. The remaining four floors were empty. The Trust did not renew the tenants’ leases when they expired. The ground floor of the property is currently used as an art gallery approximately 24 weeks per year by Carnegie Mellon students in the master of fine arts program, and is one of the locations of “gallery crawls” held four times per year. According to the Trust’s General Counsel and Senior Vice President of Operations, David R. DeSimone, there are no specific plans to expand the 820 Liberty Avenue property use in furtherance of the arts.

Historically, it has been the Trust’s policy to pay full real estate taxes on portions of its properties that produce taxable commercial business income, such as parking garages. It seeks exemptions for only those portions of its properties used for purely public charitable purposes. Thus, until 2006, the Trust

paid real estate taxes on the subject properties. It sought an exemption for the 110 Ninth Street property beginning in 2006, only when a project known as the River Park Plan was finally adopted for the development of the area. Since the property's proposed improvements will include public uses as well as for-profit residential development, the Trust will eventually seek only a partial exemption for those portions designated for purely public use, i.e., the park.

By decision mailed January 3, 2006, Allegheny County's Office of Property Assessments determined that the 820 Liberty Avenue property was 43% exempt and 57% taxable. By decision mailed December 22, 2006, the Office of Property Assessments determined that the 110 Ninth Street property did not qualify for an exemption. The Trust appealed these determinations and requested a formal hearing by the Office of Property Assessments. Following the hearing, the Office of Property Assessments issued a determination on November 1, 2007 (later clarified by a letter dated November 8, 2007), that the 820 Liberty Avenue property was 91.5% exempt for 2006 and 100% exempt for 2007 and subsequent years, and that the 110 Ninth Street property was 100% exempt for 2006 and subsequent years. The City appealed these decisions to the trial court, which, after a status conference and the deposition of Mr. DeSimone, on September 4, 2008, ordered that the properties were entitled to the exemptions set by the Office of Property Assessments. The City appealed the trial court's order to this Court.¹

¹ The standard and scope of review in these matters has been stated as follows:

Whether a parcel of property qualifies for tax exemption is a question of law. As such, this Court's standard of review is *de novo* and our scope of review is plenary. In a tax assessment appeal, our review is limited to determin[ing] whether the trial court abused its discretion or committed an error of law and whether the decision is supported by the requisite evidence.

The City, joined by Allegheny County, argues that the Trust's purchase of real estate, either to hold it indefinitely in a vacant condition, or to demolish it and convey it to a for-profit business for future commercial development, does not constitute such use and occupancy as would entitle them to tax exemption.

The Pennsylvania Constitution authorizes the General Assembly to exempt from taxation “[i]nstitutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.” Pa. Const. art. 8, § 2(a)(v). Pursuant to its constitutional authority, by Section 204(a)(3), (9), (b)-(c) of The General County Assessment Law (Assessment Law),² the General Assembly declared that:

(a) *The following property shall be exempt* from all county, city, borough, town, township, road, poor and school tax, to wit:

....

(3) All . . . institutions of . . . charity . . . with the *grounds thereto annexed and necessary for the occupancy and enjoyment of the same*, founded, endowed, and maintained by public or private charity:

....

(9) *All real property owned by . . . institutions of purely public charity, used and occupied partly by such owner . . . and necessary for the occupancy and enjoyment of such institution[] so using it;*

....

Veterans of Foreign Wars Post 1989 v. Indiana County Bd. of Assessment Appeals, 954 A.2d 100, 103 n.2 (Pa. Cmwlth. 2008) (citations and quotations omitted).

² Act of May 22, 1933, P.L. 853, *as amended*, 72 P.S. § 5020-204(a)(3), (9), (b)-(c).

(b) Except as otherwise provided in clauses (11) and (13) of this section [relating to libraries and fire stations], *all property real or personal, other than that which is actually and regularly used and occupied for the purposes specified in this section*, and all such property from which any income or revenue is derived, other than from recipients of the bounty of the institution or charity, *shall be subject to taxation*, except where exempted by law for State purposes, and nothing herein contained shall exempt same therefrom.

(c) Except as otherwise provided in clause (10) of this section [relating to playgrounds], *all property, real and personal, actually and regularly used and occupied for the purposes specified in this section shall be subject to taxation*, unless the person or persons, associations or corporation, so using and occupying the same, shall be seized of the legal or equitable title in the realty and possessor of the personal property absolutely.

(Emphasis added).

This Court has held that “[a]n entity seeking a statutory exemption for taxation must first establish that it is a ‘purely public charity’ under Article VIII, Section 2 of the Pennsylvania Constitution before the question of whether that entity meets the qualifications of a statutory exemption can be reached.” *Nat'l Church Residences of Mercer County v. Mercer County Bd. of Assessment Appeals*, 925 A.2d 220, 225 (Pa. Cmwlth. 2007). Section 5 of the Institutions of Purely Public Charity Act,³ sets forth the criteria for institutions of purely public charity.

³ Act of November 26, 1997, P.L. 508, 10 P.S. § 375. Section 5 of the Act provides, in pertinent part:

(a) **General rule.**--An institution of purely public charity is an institution which meets the criteria set forth in subsections (b), (c),

Where, as here, the parties do not dispute that a particular institution is a purely public charity whose properties may be exempt from real property taxes, this Court's focus becomes the use that the Trust makes of its property and the relationship of that use to its purposes. *See Alliance Home of Carlisle, PA v. Bd. of Assessment Appeals*, 591 Pa. 436, 465, 919 A.2d 206, 224 (2007); *Veterans of Foreign Wars Post 1989*. Under Section 204 of the Assessment Law, we must

(d), (e) and (f). An institution which meets the criteria specified in this section shall be considered to be founded, endowed and maintained by public or private charity.

(b) **Charitable purpose.**--The institution must advance a charitable purpose.

....

(c) **Private profit motive.**--The institution must operate entirely free from private profit motive.

....

(d) **Community service.**--

(1) The institution must donate or render gratuitously a substantial portion of its services.

....

(e) **Charity to persons.**--

(1) The institution must benefit a substantial and indefinite class of persons who are legitimate subjects of charity.

....

(f) **Government service.**--The institution must relieve the government of some of its burden.

....

10 P.S. § 375(a)-(f).

determine whether the subject properties are “necessary for the occupancy and enjoyment” of the Trust. *See Appeal of Nw. Corp. from Dauphin County Bd. of Assessment Appeals*, 665 A.2d 856 (Pa. Cmwlth. 1995) and *Presbyterian-Univ. of Pennsylvania Med. Ctr. v. Bd. of Revision of Taxes*, 357 A.2d 696 (Pa. Cmwlth. 1976). “Absolute necessity, however, need not be shown. Evidence establishing a reasonable necessity is sufficient to carry claimant’s burden.” *Presbyterian-Univ.* at 698.

This Court has held that the question of whether property is “necessary for the occupancy and enjoyment” of a charitable institution is one primarily for its governing board. The courts will not, however, give unlimited deference to the charitable body’s characterization.” *Id.* (citations omitted). Thus, this Court must look at “the use of the property rather than any characterization of the owner or lessee or the use of the proceeds from the property” to discern whether a tax exemption may be granted. *Bd. of Revision of Taxes of Phila. v. United Fund of Phila. Area*, 314 A.2d 530, 533 (Pa. Cmwlth. 1973).

According to the Trust’s bylaws, its specific purposes are:

- (a) to acquire, build, restore, replace, preserve, maintain and manage land and buildings and any other interest in real and personal property of any kind or description whatsoever in connection with the planning, creation, development, operation, and administration of one or more cultural districts within the City of Pittsburgh or any facilities for use in the performing or visual arts in the City of Pittsburgh;
- (b) to plan, create, develop, operate and administer, and to assist and cooperate with others in the planning, creation, development, operation and administration of, any such cultural district facilities for use in the performing or visual arts in the City of Pittsburgh,

including any real or personal property, services and accommodations ancillary thereto;

(c) to participate in the economic rejuvenation and development of the area of the City of Pittsburgh in which any such cultural district or facilities for use in the performing or visual arts are located and the environs of such area;

....

(g) to do any act or thing incidental to or in connection with the foregoing purposes or in advancement thereof....

Reproduced Record for 1931 CD 2008 at 54a-55a; Reproduced Record for 1932 CD 2008 at 45a-46a. The Trust acknowledges that the buildings on both properties are vacant, and it maintains them only as necessary. As for the 110 Ninth Street property, it is currently uninhabitable in any fashion; however, there was evidence presented that the Trust has had the intention of having the building demolished and the land developed privately, with a small portion to be owned and maintained by the Trust as a public park, which the Trust claims is in accordance with its bylaws, and in continuation of its purpose.

The Trust likewise asserts that, while it does not have plans to use or occupy the 820 Liberty Avenue property, its acquisition thereof served its purpose of eliminating the then-existing "noxious" uses, thereby assisting the growth of the performing and visual arts, by promoting economic rejuvenation and private development in the area, which are in accordance with its bylaws and in continuation of its purpose. The Trust argues that it also furthers its purposes by permitting Carnegie Mellon students, at no cost, to use the ground floor occasionally, and because it is a stop on the Cultural District's quarterly "gallery

crawls.” R.R. No. 1932 at 29a-31a, 34a-36a. Mr. DeSimone stated, however, that in the Trust’s opinion, the eventual use of the building need not necessarily be connected with the arts or non-profit charitable purposes.

In *Lutheran Home at Topton v. Bd. for Assessment & Revision of Taxes, Berks County*, 293 A.2d 888 (Pa. Cmwlth. 1972), this Court stated that “[t]he property sought to be exempted must be devoted to the charitable use,” and that those that are unused, are used for other than the charitable purposes, or are devoted to essentially commercial uses, are not exempt. *Id.* at 892. In *Odd Fellows’ Home of Pennsylvania v. Bd. of Tax Assessment Appeals of Dauphin County*, 466 A.2d 256 (Pa. Cmwlth. 1983), this Court upheld the denial of a request by a purely public charity to exempt 66.4 acres of unimproved land held for future expansion and as a buffer for the neighborhood, stating that the facts did not support the need for a buffer, and research revealed “no case in which a charity has been permitted to hold vacant land on a tax exempt basis for purposes of future construction or expansion of facilities.” *Id.* at 258. Recently, this Court held that Section 204(b) and (c) of the Assessment Law “require a purely public charity to occupy the real estate it owns in order to qualify for an exemption.” *Veterans of Foreign Wars Post 1989*, 954 A.2d at 104.

That is clearly not the case with the 820 Liberty Avenue property. While it is used occasionally, the Trust admittedly does not occupy it, and it has no plans to do so. The Trust’s purposes, as detailed in its bylaws (*supra*), are admirable; but they are not served by the Trust purchasing and holding buildings vacant in that district. Moreover, it would not be fulfilling the purpose of the taxing scheme as the Pennsylvania Courts have recognized:

Taxes are not penalties, but are contributions which all inhabitants are expected to make (and may be compelled

to make) for the support of the manifold activities of the government. Every inhabitant and every parcel of property receives governmental protection. Such protection costs money. When any inhabitant fails to contribute his share of the cost of this protection, some other inhabitant must contribute more than his fair share of that cost. . . . Any institution which by its charitable activities relieves the government of part of this burden is conferring the pecuniary benefit upon the body politic, and in receiving exemption from taxation it is merely being given a ‘quid pro quo’ for its services in providing something which otherwise the government would have to provide. . . . The measure of an institution’s gratuitous aid to those requiring it is the measure by which the government is relieved of its responsibilities.

United Fund of Phila. Area at 532 (citing *YMCA of Germantown v. Phila.*, 323 Pa. 401, 413-14, 187 A. 204, 210 (1936), disapproved of on other grounds, *W. Allegheny Hosp. v. Bd. of Prop. Assessment, Appeals & Review*, 500 Pa. 236, 455 A.2d 1170 (1982)).

As to the 110 Ninth Street property, only a portion of it is proposed to be used by the Trust at some point in the future, with the vast majority of it to be developed and used by an unrelated business entity for profit. In cases in which public charities have been granted tax exempt status for vacant properties under construction, it appears to have been with the idea that the construction was, at the very least, in the beginning stages, and that the public charity itself would occupy and use the properties once constructed. See *Senior Citizen Health Care Council of Erie County, Pa., Inc. v. Bd. of Tax Assessment Appeals of Erie County*, 678 A.2d 430 (Pa. Cmwlth. 1996) (property for which the charity hired an architect and solicited bids for renovation of its new offices was entitled to tax exempt status) and *Overmont Corp. v. Bd. of Tax Revision of City of Phila.*, 479 Pa. 249, 388 A.2d 311 (1978) (a charity constructing additional facilities is deemed to be using its

property for charitable purposes during that time so as to come within the scope of the Assessment Law). Moreover, in terms of a charity leasing or otherwise allowing another entity to operate on its property, this Court has stated that “land used by unrelated business entit[ies] existing solely as a revenue stream to finance a different and [even] charitable endeavor is not entitled to an exemption.” *Veterans of Foreign Wars Post 1989*, 954 A.2d at 106 (quotations omitted).

A taxpayer seeking exemption from real estate tax liability has the burden of proving that he/she qualifies for the exemption. *Metro. Pittsburgh Nonprofit Hous. Corp. v. Bd. of Prop. Assessment, Appeals & Review*, 480 Pa. 622, 391 A.2d 1059 (1978). “Moreover, statutory provisions exempting property from taxation are subject to a strict construction.” *Id.* at 626, 391 A.2d at 1061. Here, the Trust has failed to meet its burden of establishing that the subject properties are “necessary for the occupancy and enjoyment” of the Trust, as required by the Assessment Law. We hold, therefore, that the trial court erred by finding that the 820 Liberty Avenue property was 91.5% exempt for 2006 and 100% exempt for 2007 and subsequent years, and that the 110 Ninth Street property was 100% exempt for 2006 and subsequent years. The properties are not exempt from the local real estate taxes at issue.

For the reasons stated above, the September 4, 2008 decision of the trial court is reversed.

JOHNNY J. BUTLER
JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Appeal of the City of Pittsburgh from the Action of the Board of Property Assessment Appeals and Review of Allegheny County in regard to Property owned by the Pittsburgh Trust for Cultural Resources, Situate in the 2nd Ward of the City of Pittsburgh	:	
Block and Lot No. 2-A-25	:	
County of Allegheny School District of Pittsburgh The Pittsburgh Trust for Cultural Resources	:	
Appeal of: City of Pittsburgh	:	No. 1931 C.D. 2008
Appeal of the City of Pittsburgh from the Action of the Board of Property Assessment Appeals and Review of Allegheny County in regard to property owned by the Pittsburgh Trust for Cultural Resources, Situate in the 2nd Ward of the City of Pittsburgh	:	
Block and Lot No. 9-N-196	:	
County of Allegheny School District of Pittsburgh The Pittsburgh Trust for Cultural Resources	:	
Appeal of: City of Pittsburgh	:	No. 1932 C.D. 2008

ORDER

AND NOW, this 17th day of June, 2009, the September 4, 2008 order of
the Court of Common Pleas of Allegheny County is hereby reversed.

Certified from the Record

JUN 17 2009

and Order Exit

JOHNNY J. BUTLER
JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

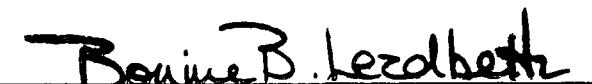
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Block and Lot No. 9-N-196	:	
County of Allegheny School District of Pittsburgh The Pittsburgh Trust for Cultural Resources	:	No. 1932 C.D. 2008
Appeal of: City of Pittsburgh	:	Argued: May 6, 2009

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

**DISSENTING OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: June 17, 2009

I must respectfully dissent. Given the specific mission of the Trust, which is conceded to be that of a purely public charity, I believe, as found by the trial court, that the Trust is currently "using" the properties in question for those charitable purposes. In addition, I believe the term "occupancy" means no more than regular use by the charitable institution. Accordingly, I would affirm the thoughtful decision of the Honorable R. Stanton Wettick, Jr.


BONNIE BRIGANCE LEADBETTER,
President Judge

Judge Leavitt joins this dissenting opinion.



OFFICE OF THE TREASURER

County of Allegheny
ERICA ROCCHI BRUSSELARS
COUNTY TREASURER

ROOM 108 COURTHOUSE
436 GRANT STREET ♦ PITTSBURGH, PA 15219-2497
PHONE (412) 350-4100 ♦ FAX (412) 350-5649

OFFICIAL RECEIPT OF REAL ESTATE TAX PAYMENT

PROPERTY OWNER & PROPERTY ADDRESS

PITTSBURGH TRUST FOR CULTURAL RESOURCES (THE)

0 9TH ST

Parcel ID : 0009-N-00196-0000-00

Municipality : 102 2nd Ward - PITTSBURGH

Current Taxable Market Value : 425,000

Tax Year	Date of Payment	Amount of Tax	Status
2025	3/5/2025	\$2,678.09	PAID

This is to certify that the records of this office show the Allegheny County real estate taxes for the above listed property are posted paid for the year designated.

Receipt Date: 3/5/2025

Erica Rocchi Brusselars
Allegheny County Treasurer



PITTSBURGH TRUST FOR CULTURAL RESOURCES (THE)
803 LIBERTY AVE
PITTSBURGH PA 15222-3703

COMMERCIAL - REGION: 4

ASSIGN DATE : 08/06/2020

ASSESSOR : 719 Chris Gricar

MUNICIPALITY : 102 2nd Ward - PITTSBURGH

PARCEL ID / ALTERNATE ID : 0009-N-00196-0000-00

PROPERTY LOCATION : 110 9TH ST

PROPERTY OWNER : PITTSBURGH TRUST FOR CULTURAL RESOURCES

LEGAL DESCRIPTION : LOT #2 148.45X100.23X142.97

CIRCLE YEAR(S): 2014 2015 2016 2017 2018 2019 2020 2021

Purpose / Note	Amount	Date	Permit#	Last Visit	Status %	Cnt
07 DEMOLITION DEMOLITION OF FORMER DUFF BLDG AND BACKFILL VOIDS	649,200	11/01/2019	DP-2019-05409	06/30/2020 R	75%	1
CIRCLE PCT COMPLETE:	0%	15%	25%	50%	75%	100% (C) 100%

Entrance Info:

Date	Entrance Code	Source	Assessor ID
<u>8-17-20</u>	<u>0</u>	<u>4</u>	<u>719</u>

NOTES: DEMOLITION COMPLETE NEW PHOTO
REMOVE BLDG DATA / SKETCH
CHANCE LUC / LAND

Workflow Tech	VA / VA Supervisor	CAMA Tech
Logged To Field <u>08/06/2020</u>	QC Reviewed <u>8/21/20 VA 719</u>	Data Entered <u>1/1/1</u>
Logged From Field <u>7/17/20</u>	Valuation Signoff <u>8/21/20 VA 719</u>	
Closed <u>10/2/20</u>	NVC Signoff <u>1/1/1 VA</u>	
	Partial Valuation Signoff <u>1/1/1 VA</u>	

AA14 NOTES

LINE	CODE	NOTE
1001	COMM	Bus-Tech Building
1002	COMM	1st, 4th, 5th, 6th flrs - Duff's Business Inst.
1003	COMM	2nd, 3rd flrs - Penn Technical
1004	COMM	1sf flr - Pgh Technical Institute
1005	COMM	2nd flr - part owner-occupied
2001	COMM	Bus-Tech Building
2002	COMM	1st, 4th, 5th, 6th flrs - Duff's Business Inst.
2003	COMM	2nd, 3rd flrs - Penn Technical
2004	COMM	1sf flr - Pgh Technical Institute
2005	COMM	2nd flr - part owner-occupied
1.1	EXEM	BOA SENT REVISED LETTER THAT IT IS AWARDED 2006-FORWARD
2006	EXEM	EXEMPTION DENIED NOT BEING USED FOR CHARITABLE PURPOSES
2007	EXEM	BOA AWARDED 100% EXEMPT 2007-FORWARD SEE NOTE 1.1
2008	MAP	CORRECTED ACREAGE - 2012 REVAL ONLY- PER L & B SHEET

COMMERCIAL PROPERTY RECORD CARD

2021

400

ALLEGHENY COUNTY, PA

Situs : 110 9TH ST

Map ID: 0009-N-00196-0000-00

LUC: 449 - OFFICE ELEVATOR 3+ STORIES

Card: 1 of 1

Printed: Jul 30, 2020

PITTSBURGH TRUST FOR CULTURAL
RESOURCES
(THE)
803 LIBERTY AVE
PITTSBURGH PA 15222-3703

Living Units 0
Neighborhood 51C01
MUNI 102 - 2nd Ward -
School Dist 47 - Pittsburgh
Tax Status T
Zoning GT
Class COMMERCIAL
TB Type



New
Photo

Location: 1 - Central Business District
Fronting: 2 - Secondary Artery

Influence Factors:

Parking: 2 - On Street Qty: 2 - Adequate Prox: 1 - Near
TOPO: 1 - Level
UTIL: 1 - Sewer / Water
STREET: 5 - Paved Sidewall
TRAFFIC: 3 - Heavy

	Certified Assessed Value	Appraised	Cost	Income	Market
Land	425,000	425,000	1,752,500	1,752,500	0
Building	925,000	925,000	5,639,900	5,426,790	0
Total	1,350,000	1,350,000	7,392,400	7,179,290	0

Value Method OVERRIDE
Posted Reason Hf - Bpaar - Hearing Formal Bd
Approved
Posted Homestead:
Posted Bldg Abatement:

#	Type	Size	Influence Factors	Influence %	Value
		BSize	BRate	Blncr	BDecr
1	S Primary Site	SF 14,604		120.00	1,752,480
		5000			120.00
2	C Air Rights	SF 14,604	0	0.00	0.00
		0			

REMOVE

Total Acres: .6706

Date Issued	Number	Price	Purpose	Status
11/01/19	DP-2019-0540	649,200	07 DEMOLITION	Recheck CLOSE
07/27/06	FVR-9999		EX EXEMPTION	Closed

Tieback - 0009N0019800000 Child/Parent - T3 Tb code - C

8/17/20 719 0 4

COMMERCIAL PROPERTY RECORD CARD

2021

Situs : 110 9TH ST

Map ID: 0009-N-00196-0000-00

LUC: 449 - OFFICE-ELEVATOR -3 + STORIES

ALLEGHENY COUNTY, PA

Card: 1 of 1

Printed: Jul 30, 2020

Year Built/Eff Year	1930 /	Line	Type	+/-	Meas1	Meas2	# Stops	Ident Units	Line	Type	+/-	Meas1	Meas2	# Stops	Ident Units
Building #		1	Open Area, High Rise Off		1	26		1							
Structure Type	Office Building	1	Open Area, High Rise Off		1	24		1							
Identical Units	1	1	Open Area, High Rise Off		1	24		1							
Total Units		1	Open Area, High Rise Off		1	24		1							
# Covered Parking		1	Open Area, High Rise Off		1	24		1							
# Uncovered Parking		1	Loading Dock, Covered		1	180		1							
Improvement Name:															
Franchise:															

Line	Lvl	From - To	Area	Perim	Wall Hg	Use Type	Occupancy	Sect	Table	Spvl	Class	Quality	Heat	Base Price	% Comp	Physical	Functional
1	B1	B1	12,442	1	10	Storage	326 STORAGE	14	14	FB	C	AV	VNT	25	3	3	
2	01	01	12,344	1	14	Office Building	344 OFFICE BU	15	01		C	AV	AVC	90	3	3	
3	M1	M1	2,500		7	Mezzanines-Off	344 OFFICE BU	15	05	OM	C	AV	NA	55	3	3	
4	02	07	12,442	1	14	Office Building	344 OFFICE BU	15	01		C	AV	AVC	90	3	3	

Line	Area	Use Type	RCN	% Good	Use Value/RCNLd	Line	Type	Yr Blt	Meas1	Meas2	Qty	Area	Grade	Phy Fun	Value
1	12,442	Storage	359,150	45	161,620										
2	12,344	Office Building	1,835,950	45	826,180										
3	2,500	Mezzanines-Off	155,380	45	69,920										
4	12,442	Office Building	10,182,530	45	4,582,140										

COMMERCIAL PROPERTY RECORD CARD

2021

Situs : 110 9TH ST

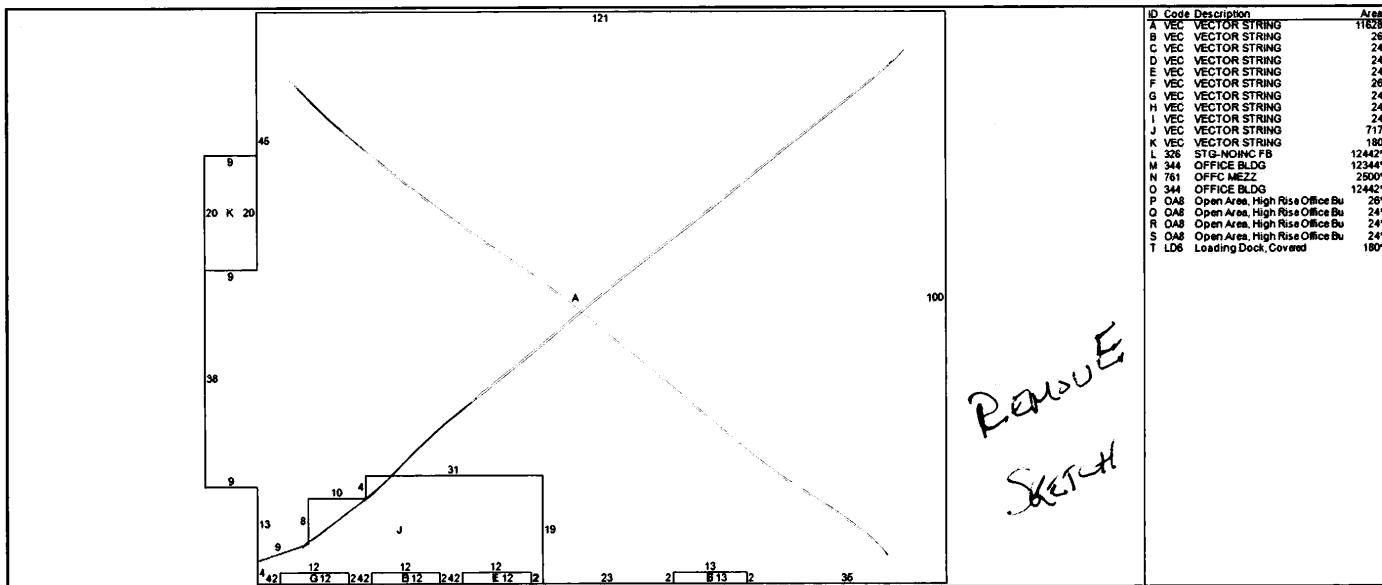
Map ID: 0009-N-00196-0000-00

LUC: 449 - OFFICE-ELEVATOR -3+ STORIES

ALLEGHENY COUNTY, PA

Card: 1 of 1

Printed: Jul 30, 2020



Additional Property Photos

COMMERCIAL PROPERTY RECORD CARD

- - -
2021

ALLEGHENY COUNTY, PA

Situs : 110 9TH ST

Map ID: 0009-N-00196-0000-00

LUC: 449 - OFFICE-ELEVATOR -3 + STORIES

Card: 1 of 1

Printed: Jul 30, 2020

Use Grp	Mod Type	Inc Mod	Model Description	Units	Net Area	Income Rate	Econ Adjust	Potential Gross Income	Vac Model	Vac Adj	Additional Income	Effective Gross Income	Expense Model %	Expense Adj %	Expense Adj	Other Expenses	Total Expenses	Net Operating Income
00	S	001	Support/Exempt	0	14,942						0							
04	S	001	General Office	0	86,996	22.00		1,913,910	15.625		0	1,615,340	50			807,670	807,670	807,670

Line	Use Type	Per Bldg	Beds	Baths	Units	Rent	Income	
								Total Gross Building Area 101,938
								Total Replacement Cost New 12,533,010
								Replace, Cost New Less Depr 5,639,860
								Percent Complete 100
								Number of Identical Units 1
								Economic Condition Factor
								Final Building Value 5,639,860
								Overall % Good 45
								Value per SF 55.33
								Total Net Income 807,670
								Capitalization Rate 0.112500
								Sub total 7,179,289
								Residual Land Value
								Final Income Value 7,179,290
								Total Gross Rent Area 86,996
								Total Gross Building Area 101,938

COMMERCIAL - REGION: 4

ASSIGN DATE : 02/20/2020

ASSESSOR : 719 Chris Gricar

MUNICIPALITY : 102 2nd Ward - PITTSBURGH

PARCEL ID / ALTERNATE ID : 0009-N-00196-0000-00

PROPERTY LOCATION : 110 9TH ST

PROPERTY OWNER : PITTSBURGH TRUST FOR CULTURAL RESOURCES

LEGAL DESCRIPTION : LOT #2 148.45X100.23X142.97

CIRCLE YEAR(S): 2014 2015 2016 2017 2018 2019 2020 2021

Purpose / Note	Amount	Date	Permit#	Last Visit	Status %	Cnt
07 DEMOLITION DEMOLITION OF FORMER DUFF BLDG AND BACKFILL VOIDS	649,200	11/01/2019	DP-2019-05409	01/10/2020	R 75%	
CIRCLE PCT COMPLETE:	0%	15%	25% 50%	75%	100%	<u>R</u> <u>50%</u>

Entrance Info:

Date	Entrance Code	Source	Assessor ID
<u>3-24-20</u>	<u>0</u>	<u>4</u>	<u>719</u>

NOTES: LAST STAGES OF Demolition

Workflow Tech	VA / VA Supervisor	CAMA Tech
Logged To Field <u>02/20/2020</u>	QC Reviewed <u>/ / /</u> VA <u> </u>	Data Entered <u>/ / /</u>
Logged From Field <u>7/1/20</u>	Valuation Signoff <u>/ / /</u> VA <u> </u>	
Closed <u>/ / /</u>	NVC Signoff <u>/ / /</u> VA <u> </u>	
	Partial Valuation Signoff <u>/ / /</u> VA <u> </u>	

AA14 NOTES

LINE	CODE	NOTE
1001	COMM	Bus-Tech Building
1002	COMM	1st, 4th, 5th, 6th flrs - Duff's Business Inst.
1003	COMM	2nd, 3rd flrs - Penn Technical
1004	COMM	1sf flr - Pgh Technical Institute
1005	COMM	2nd flr - part owner-occupied
2001	COMM	Bus-Tech Building
2002	COMM	1st, 4th, 5th, 6th flrs - Duff's Business Inst.
2003	COMM	2nd, 3rd flrs - Penn Technical
2004	COMM	1sf flr - Pgh Technical Institute
2005	COMM	2nd flr - part owner-occupied
1.1	EXEM	BOA SENT REVISED LETTER THAT IT IS AWARDED 2006-FORWARD
2006	EXEM	EXEMPTION DENIED NOT BEING USED FOR CHARITABLE PURPOSES
2007	EXEM	BOA AWARDED 100% EXEMPT 2007-FORWARD SEE NOTE 1.1
2008	MAP	CORRECTED ACREAGE - 2012 REVAL ONLY- PER L & B SHEET

COMMERCIAL - REGION: 4

ASSIGN DATE : 01/09/2020

ASSESSOR : 858 Meghan Moschella

MUNICIPALITY : 102 2nd Ward - PITTSBURGH

PARCEL ID / ALTERNATE ID : 0009-N-00196-0000-00

PROPERTY LOCATION : 110 9TH ST

PROPERTY OWNER : PITTSBURGH TRUST FOR CULTURAL RESOURCES

LEGAL DESCRIPTION : LOT #2 148.45X100.23X142.97

CIRCLE YEAR(S): 2013 2014 2015 2016 2017 2018 2019 2020

Purpose / Note	Amount	Date	Permit#	Last Visit	Status %	Cnt
07 DEMOLITION DEMOLITION OF FORMER DUFF BLDG AND BACKFILL VOIDS	649,200	11/01/2019	DP-2019-05409	8	0%	
CIRCLE PCT COMPLETE:	0%	15%	25%	50%	75% 100%	R 25

Entrance Info:

Date	Entrance Code	Source	Assessor ID
<u>1-10-20</u>	<u>6</u>	<u>4</u>	<u>858</u>

NOTES: Demolition in progress

Workflow Tech	VA / VA Supervisor	CAMA Tech
Logged To Field 01/09/2020	QC Reviewed / / VA	Data Entered / /
Logged From Field <u>1/13/20</u>	Valuation Signoff / / VA	
Closed / /	NVC Signoff / / VA	
	Partial Valuation Signoff / / VA	

AA14 NOTES

LINE	CODE	NOTE
1001	COMM	Bus-Tech Building
1002	COMM	1st, 4th, 5th, 6th flrs - Duff's Business Inst.
1003	COMM	2nd, 3rd flrs - Penn Technical
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2007	EXEM	BOA AWARDED 100% EXEMPT 2007-FORWARD SEE NOTE 1.1
2008	MAP	CORRECTED ACREAGE - 2012 REVAL ONLY- PER L & B SHEET

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A-N-196

3.24.20