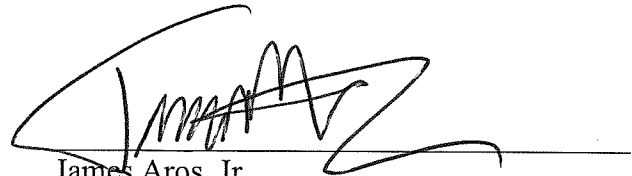


**REPORT ON PUBLIC HEARING HELD JANUARY 14, 2022
BY THE OFFICE OF PROPERTY ASSESSMENT OF THE CITY OF PHILADELPHIA
REGARDING PROPOSED AMENDMENTS TO THE REGULATIONS
OF THE OFFICE OF PROPERTY ASSESSMENT OF THE CITY OF PHILADELPHIA**

Dated: 2-4-2022



James Aros, Jr.
Chief Assessment Officer
City of Philadelphia
Office of Property Assessment

Dated: 2/4/2022

Approved: Drew E. Aldinger

Law Department
Drew E. Aldinger
Chief Deputy City Solicitor

A. Legal Authority

The City of Philadelphia Office of Property Assessment (“OPA”) was created by an amendment to the City Code, Phila. Code § 2-304. Among the powers and duties of the OPA is the responsibility to consider and determine applications for tax abatement and tax exemption. Phila. Code § 2-305(2)(1). The OPA has the power to promulgate reasonable regulations as necessary and appropriate in the exercise of its powers and performance of its duties under the Home Rule Charter or under any statute or ordinance, including its duties related to the consideration and determination of applications for tax abatement and tax exemption.

Recent legislative changes have modified the exemption schedules for certain properties eligible for City tax abatement. These new schedules, set forth in Bill No. 200366, which became law on December 15, 2020, and Bill No. 200653, which became law on January 27, 2021, affect all abatement applications initially filed after December 31, 2021. Under these new requirements, non-residential properties are now eligible for a 10-year abatement on 90% of the additional assessment attributable to actual improvement costs. Newly constructed residential properties are now eligible for a 10-year abatement on the assessable amount of construction costs, beginning at 100% and declining by 10% annually. Improved residential properties remain eligible for a 10-year abatement on 100% of the additional assessment attributable to actual improvement costs. In light of the differentiation in abatement schedules based on whether a property is newly constructed or improved or qualifies as residential or non-residential, the OPA promulgated regulations to clarify the application of these new legislative provisions.

B. Procedural Summary

The OPA followed the procedures set forth in Home Rule Charter § 8-407 when promulgating proposed Amendments to the Regulations of the Office of Property Assessment of the City of Philadelphia (“Amendments”). The OPA approved the Amendments on November 17, 2021, the Law Department approved the Amendments for public comment posting on November 19, 2021 and the Amendments were filed with the Records Department on the same date. A request for a hearing was received on December 15, 2021. Pursuant to the request, a public hearing was scheduled for January 14, 2022 and notice thereof was advertised in local newspapers and posted on OPA’s website.

Through this report on the January 14, 2022 hearing, OPA modifies the proposed amendment and adopts it as modified. A clean copy of the Regulation as amended is attached as Exhibit A and shall become effective 11 days after the filing of this Report with the Records Department. A markup showing all changes made to the Regulation by the regulatory process initiated on November 17, 2021, and being approved by OPA through this Report, is attached as Exhibit B.

C. The January 14, 2022 Hearing

The hearing was conducted by James Aros, Jr., Chief Assessment Officer. Drew Aldinger, Chief Deputy City Solicitor, and Reynelle Staley, Senior Attorney, attended on behalf of the Law Department. In advance of the meeting, written public comments were submitted jointly by Christopher Jones, Matthew McClure, and Nathanael Farris of Ballard Spahr (“written comments”). A copy of the written comments are attached hereto as Exhibit C. Oral comments

were offered by Christopher Jones at the public meeting that summarized and clarified the written comments previously submitted (collectively with the written comments, the “Ballard Spahr comments”). No other comments were offered.

D. Summary of Ballard Spahr Comments and OPA Responses Thereto

1. Ballard Spahr asked that OPA clarify the application of the regulation to new construction mixed-use projects consisting of multiple condominium units. More specifically, Ballard Spahr requested confirmation that predominant use will be determined for each individual property or condominium unit rather than for an entire building or project, as required by the Condominium Act.

OPA Response: The OPA agrees that applicable law requires that predominant use in new construction mixed-use condominium buildings or projects be determined for each individual property or condominium unit rather than for the building or project as a whole and modifies Section 302(b) as follows:

The predominant use of the newly constructed ~~building's~~ property's assessable square footage shall determine the qualifying exemption.

2. Ballard Spahr requested that the start date for abatements for new construction of multi-unit residential properties be amended to January 1 of the calendar year following the year that the certificate of use and occupancy is issued for the property. This change was recommended to align the commencement dates for both the residential abatement and commercial abatements.

OPA Response: Section 19-1303.4(5)(b) of the Philadelphia Code provides that the effective date for the commencement of abatements shall be the first day of the month following the month in which settlement was made and a certificate of occupancy was issued. In the event a certificate of occupancy is issued without settlement being made, the commencement date of the abatement will be the first day of the month following the issuance of a certificate of occupancy.

3. Ballard Spahr requested clarification concerning the eligibility of mixed-use properties defined as residential under the Regulations for further abatement under 72 P.S. § 5020-205 (Act 135). Specifically, they asked whether an entire mixed-use property would be excluded from assessment for purposes of real property taxes under the terms and conditions of Act 135 based on the Regulations' categorization of the property as residential for purposes of Code § 19-1303.2.

OPA Response: The Regulations govern abatements as provided by §§ 19-1303.2, 19-1303.3, and 19-1303.4 of the Code. They do not impact the application of any other laws, including 72 P.S. § 5020-205.

4. Ballard Spahr requested clarification as to whether the Regulations are applicable only to abatement applications filed on or after January 1, 2022 or apply retroactively to applications submitted before that date.

OPA Response: The Regulations relate to provisions of the Code governing abatement applications filed on or after January 1, 2022 and apply immediately to all applications pending after January 1, 2022.

**REGULATIONS OF
THE OFFICE OF PROPERTY ASSESSMENT OF THE CITY OF PHILADELPHIA**

**ARTICLE I
GENERAL PROVISIONS**

Section 101. Definitions.

The following words and phrases when used in the Regulations of the Office of Property Assessment of the City of Philadelphia shall have the meanings given to them in this Section unless specifically provided otherwise or unless the text clearly indicates otherwise:

- (a) “Code.” The Philadelphia Code.
- (b) “DIT.” Development Impact Tax established by Chapter 19-4400 of the Code.
- (c) “OPA.” Office of Property Assessment of the City of Philadelphia.
- (d) “Regulations.” Regulations of the Office of Property Assessment of the City of Philadelphia.
- (e) “Total Project Costs.” Entire estimated cost of construction or improvement, including all costs covered by the Building Permit as well as the cost of all electrical, plumbing, mechanical, fire suppression systems, and interior finishes.
- (f) “Building Permit.” A permit for construction issued for an Eligible Property by the Department of Licenses & Inspections pursuant to § 4-A-301.1.1 of the Code.

ARTICLE II
**IMPROVEMENTS TO RESIDENTIAL PROPERTIES AND DETERIORATED
INDUSTRIAL, COMMERCIAL OR OTHER BUSINESS PROPERTIES FOR
PURPOSES OF DETERMINING ELIGIBILITY FOR EXEMPTION FROM REAL
ESTATE TAXES**

Section 201. Application.

Upon application, OPA may grant a real estate tax exemption upon improvements to certain eligible properties. Improvements to residential properties and deteriorated industrial, commercial or other business properties as well as new construction of residential properties may qualify for exemption, as provided by §§ 19-1303.2, 19-1303.3, and 19-1303.4 of the Code. The Building Permit issued shall determine the property's eligibility for exemption as improved or newly constructed pursuant to the applicable section of the Code.

Section 202. Improvements for Purposes of Determining Eligibility for Exemption from Real Estate Taxes

(a) Repairs, constructions, or reconstruction, including additions and alterations, shall be deemed improvements eligible for real estate tax exemption when they have the effect of rehabilitating a structure or property so that it becomes habitable or attains a higher degree of housing safety, health or amenity, or is brought into compliance with the laws, ordinances, or regulations of the City of Philadelphia. Repairs, constructions, or reconstruction that do not exceed \$15,000.00 in total project costs shall not qualify as improvements.

(b) Ordinary upkeep and maintenance shall not qualify an improvement. Work that is either required to keep a property in the same or similar condition or is expected to be required to repeated within a ten (10) year period will be deemed a non-improvement.

(c) Improvements may include, but are not limited to:

(1) New construction, additions, and/or alterations that change the square footage of a structure;

(2) Rehabilitation of an existing uninhabitable structure or portion thereof to make it habitable;

(3) Rehabilitation of an existing structure or portion thereof causing it to attain a higher degree of housing safety, health, or amenity;

(4) Rehabilitation of an existing structure or portion thereof causing it to become compliant with applicable laws, ordinances, or regulations;

- (5) Rehabilitation or alterations performed to change the use of the structure or portion thereof;
- (6) Structural modifications to an existing structure or portion thereof;
- (7) Work performed to change the number of residential dwelling units in an existing structure; or
- (8) Capital improvements to an existing structure that are beyond regular maintenance.

(d) Non-improvements include, but are not limited to, the following work when performed in isolation:

- (1) Painting, wallpapering, or paneling of existing walls;
- (2) Installation or repair of carpeting, tile, or hardwood flooring;
- (3) Repair or replacement of an existing heating and/or cooling system;
- (4) Repair, updating, or replacement of electrical system;
- (5) Repair, updating, or replacement of plumbing system;
- (6) Repair or replacement of existing roof;
- (7) Repairs to exterior brick walls and/or pointing;
- (8) Repairs to exterior stucco walls;
- (9) Repair or replacement of existing property sidewalk(s);
- (10) Installation, repairs, or replacement of fences; or
- (11) Exterior landscaping work

(e) With the exception of installation, repairs, or replacement of fences and exterior landscaping work, work deemed a non-improvement under Section 202(d) when performed in isolation may be eligible for exemption when performed as part of a larger rehabilitation or modification project that qualifies for an improvement under Section 202(c), or when performed in combination with other such work considered a non-improvement when performed in isolation, if such combination constitutes rehabilitation or modification sufficient to qualify under Section 202(c).

ARTICLE III
EXEMPTION FROM REAL ESTATE TAXES FOR MIXED-USE PROPERTY

Section 301. Authorized Exemptions.

(a) Newly constructed and improved properties designed for both residential and non-residential uses (mixed-use properties) may be eligible for one temporary real estate tax exemption pursuant to §§ 19-1303.2, 19-1303.3 or 19-1303.4 of the Code.

(b) If a taxpayer submits more than one application for exemption, the exemption shall be subject to a single eligibility determination by OPA if the Building Permits supporting the applications are issued no more than six (6) months apart. The taxpayer shall be responsible for amending any existing exemption application to request OPA's consideration of improvements for which exemption is sought that were not included in the original application. Exemption applications based on Building Permits issued more than six (6) months apart shall be subject to separate consideration for exemption pursuant to §§ 19-1303.2, 19-1303.3 or 19-1303.4 of the Code as separate applications.

Section 302. Construction of New Mixed-Use Property.

(a) Newly constructed mixed-use property may qualify either as residential property eligible for exemption pursuant to § 19-1303.4 or as non-residential property eligible for exemption pursuant to § 19-1303.3.

(b) The predominant use of the newly constructed property's assessable square footage shall determine the qualifying exemption.

(1) Property shall be considered residential property for purposes of § 19-1303.4 if fifty percent (50%) or more of the newly constructed assessable square footage is dedicated to residential use.

(2) Property shall be considered non-residential property for purposes of § 19-1303.3 if more than fifty percent (50%) of the newly constructed assessable square footage is dedicated to non-residential use.

Section 303. Improvements to Existing Property That Will Be Mixed-Use After Improvements.

(a) Existing property subject to improvements, as defined in Section 202 of these Regulations, that will remain or become mixed-use after improvements may qualify either as residential property eligible for exemption pursuant to § 19-1303.2 or as non-residential property eligible for exemption pursuant to § 19-1303.3.

(b) The predominant use of the portion of the property subject to improvements shall determine the qualifying exemption.

(1) Property shall be considered residential property for purposes of § 19-1303.2 if fifty percent (50%) or more of the assessable square footage subject to improvements will, after improvements, be dedicated to residential use.

(2) Property shall be considered non-residential property for purposes of § 19-1303.3 if more than fifty percent (50%) of the assessable square footage subject to improvements will, after improvements, be dedicated to non-residential use.

Section 304. Exemption Calculation.

(a) Assessable square footage dedicated to residential use shall include, but not be limited to:

(1) Areas designed for occupancy by one or more families, such as apartments, condominium units and cooperative units.

(2) Areas designed for occupancy for group living, as defined in § 14-601(2)(b) of the Code.

(3) Common spaces, such as lobbies and garages, available for use by residential occupants.

(4) Unfinished spaces or portions thereof, such as garages and storage spaces, that are utilized by residential occupants.

(b) Assessable square footage dedicated to non-residential use shall include, but not be limited to:

(1) Areas primarily designed for occupancy by commercial or other non-residential businesses.

(2) Unfinished spaces or portions thereof, such as garages and storage spaces, that are utilized by commercial or other non-residential businesses.

Section 305. Exemption Revocation.

(a) OPA shall have authority to terminate or adjust any real estate tax exemption if it determines that the predominant use of the property is not consistent with the granted exemption.

ARTICLE IV
**DEADLINES FOR SUBMISSION OF APPLICATIONS FOR REAL ESTATE TAX
EXEMPTION PURSUANT TO §§ 19-1303.2, 19-1303.3 AND 19-1303.4**

Section 401. Application Period.

(a) A written application for Real Estate Tax Exemption may be filed with OPA upon issuance of the Building Permit.

(1) The application period for exemption applications filed pursuant to § 19-1303.3 or § 19-1303.4 shall extend until sixty (60) days after issuance of the Building Permit.

(2) The application period for exemption applications filed pursuant to § 19-1303.2 shall extend until December 31st of the calendar year in which the Building Permit is issued.

(b) Exemption applications shall be denied if the Applicant fails to timely file within the application period.

**AMENDMENTS TO THE REGULATIONS OF
THE OFFICE OF PROPERTY ASSESSMENT OF THE CITY OF PHILADELPHIA**

The regulations of the Office of Property Assessment are hereby amended as follows:

Deletions in ~~Strikethrough~~
Additions in Underline

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The following words and phrases when used in the Regulations of the Office of Property Assessment of the City of Philadelphia shall have the meanings given to them in this Section unless specifically provided otherwise or unless the text clearly indicates otherwise:

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- (e) "Total Project Costs." Entire estimated cost of construction or improvement, including all costs covered by the Building Permit as well as the cost of all electrical, plumbing, mechanical, fire suppression systems, and interior finishes.
- (f) "Building Permit." A permit for construction issued for an Eligible Property by the Department of Licenses & Inspections pursuant to § 4-A-301.1.1 of the Code

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Upon application, OPA may grant a real estate tax exemption upon improvements to certain eligible properties. Improvements to residential properties and deteriorated industrial, commercial or other business properties as well as new construction of residential properties may qualify for exemption, as provided by §§ 19-1303.2, 19-1303.3, and 19-1303.4 of the Code. The Building Permit issued shall determine the property's eligibility for exemption as improved or newly constructed pursuant to the applicable section of the Code.

Section 202. Improvements for Purposes of Determining Eligibility for Exemption from Real Estate Taxes

(a) Repairs, constructions, or reconstruction, including additions and alterations, shall be deemed improvements eligible for real estate tax exemption when they have the effect of rehabilitating a structure or property so that it becomes habitable or attains a higher degree of housing safety, health or amenity, or is brought into compliance with the laws, ordinances, or regulations of the City of Philadelphia. Repairs, constructions, or reconstruction that do not exceed \$15,000.00 in total project costs shall not qualify as improvements.

(b) Ordinary upkeep and maintenance shall not qualify an improvement. Work that is either required to keep a property in the same or similar condition or is expected to be required to repeated within a ten (10) year period will be deemed a non-improvement.

(c) Improvements may include, but are not limited to:

(1) New construction, additions, and/or alterations that change the square footage of a structure;

(2) Rehabilitation of an existing uninhabitable structure or portion thereof to make it habitable;

(3) Rehabilitation of an existing structure or portion thereof causing it to attain a higher degree of housing safety, health, or amenity;

(4) Rehabilitation of an existing structure or portion thereof causing it to become compliant with applicable laws, ordinances, or regulations;

- (5) Rehabilitation or alterations performed to change the use of the structure or portion thereof;
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- (7) Work performed to change the number of residential dwelling units in an existing structure; or
- (8) Capital improvements to an existing structure that are beyond regular maintenance.

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- (1) Painting, wallpapering, or paneling of existing walls;
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- (4) Repair, updating, or replacement of electrical system;
- (5) Repair, updating, or replacement of plumbing system;
- (6) Repair or replacement of existing roof;
- (7) Repairs to exterior brick walls and/or pointing;
- (8) Repairs to exterior stucco walls;
- (9) Repair or replacement of existing property sidewalk(s);
- (10) Installation, repairs, or replacement of fences; or
- (11) Exterior landscaping work.

(e) With the exception of installation, repairs, or replacement of fences and exterior landscaping work, work deemed a non-improvement under Section 202(d) when performed in isolation may be eligible for exemption when performed as part of a larger rehabilitation or modification project that qualifies for an improvement under Section 202(c), or when performed in combination with other such work considered a non-improvement when performed in isolation, if such combination constitutes rehabilitation or modification sufficient to qualify under Section 202(c).

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(a) Newly constructed and improved properties designed for both residential and non-residential uses (mixed-use properties) may be eligible for one temporary real estate tax exemption pursuant to §§ 19-1303.2, 19-1303.3 or 19-1303.4 of the Code.

(b) If a taxpayer submits more than one application for exemption, the exemption shall be subject to a single eligibility determination by OPA if the Building Permits supporting the applications are issued no more than six (6) months apart. The taxpayer shall be responsible for amending any existing exemption application to request OPA's consideration of improvements for which exemption is sought that were not included in the original application. Exemption applications based on Building Permits issued more than six (6) months apart shall be subject to separate consideration for exemption pursuant to §§ 19-1303.2, 19-1303.3 or 19-1303.4 of the Code as separate applications.

Section 302. Construction of New Mixed-Use Property.

(a) Newly constructed mixed-use property may qualify either as residential property eligible for exemption pursuant to § 19-1303.4 or as non-residential property eligible for exemption pursuant to § 19-1303.3.

(b) The predominant use of the newly constructed property's assessable square footage shall determine the qualifying exemption.

(1) Property shall be considered residential property for purposes of § 19-1303.4 if fifty percent (50%) or more of the newly constructed assessable square footage is dedicated to residential use

(2) Property shall be considered non-residential property for purposes of § 19-1303.3 if more than fifty percent (50%) of the newly constructed assessable square footage is dedicated to non-residential use.

Section 303. Improvements to Existing Property That Will Be Mixed-Use After Improvements.

(a) Existing property subject to improvements, as defined in Section 202 of these Regulations, that will remain or become mixed-use after improvements may qualify either as

residential property eligible for exemption pursuant to § 19-1303.2 or as non-residential property eligible for exemption pursuant to § 19-1303.3.

(b) The predominant use of the portion of the property subject to improvements shall determine the qualifying exemption.

(1) Property shall be considered residential property for purposes of § 19-1303.2 if fifty percent (50%) or more of the assessable square footage subject to improvements will, after improvements, be dedicated to residential use.

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(a) Assessable square footage dedicated to residential use shall include, but not be limited to:

(1) Areas designed for occupancy by one or more families, such as apartments, condominium units and cooperative units.

(2) Areas designed for occupancy for group living, as defined in § 14-601(2)(b) of the Code.

(3) Common spaces, such as lobbies and garages, available for use by residential occupants.

(4) Unfinished spaces or portions thereof, such as garages and storage spaces, that are utilized by residential occupants.

(b) Assessable square footage dedicated to non-residential use shall include, but not be limited to:

(1) Areas primarily designed for occupancy by commercial or other non-residential businesses.

(2) Unfinished spaces or portions thereof, such as garages and storage spaces, that are utilized by commercial or other non-residential businesses.

Section 305. Exemption Revocation.

(a) OPA shall have authority to terminate or adjust any real estate tax exemption if it determines that the predominant use of the property is not consistent with the granted exemption.

ARTICLE IV
DEADLINES FOR SUBMISSION OF APPLICATIONS FOR REAL ESTATE TAX
EXEMPTION PURSUANT TO §§ 19-1303.2, 19-1303.3 AND 19-1303.4

Section 401. Application Period.

(a) A written application for Real Estate Tax Exemption may be filed with OPA upon issuance of the Building Permit.

(1) The application period for exemption applications filed pursuant to § 19-1303.3 or § 19-1303.4 shall extend until sixty (60) days after issuance of the Building Permit.

(2) The application period for exemption applications filed pursuant to § 19-1303.2 shall extend until December 31st of the calendar year in which the Building Permit is issued.

(b) Exemption applications shall be denied if the Applicant fails to timely file within the application period.

MEMORANDUM

TO Drew E. Aldinger Esq.

FROM Christopher A. Jones
Matthew N. McClure
Nathanael Farris

DATE January 12, 2022

RE Comments on the Proposed Amendments to the Regulations (the “Proposed Regulations”) of the Office of Property Assessment (“OPA”)

This memorandum addresses four issues with the Proposed Regulations related to the exemptions from real estate provided by Sections 19-1303.2, 19-1303.3 and 19-1303.4 of the Philadelphia Code (the “Code”).

By way of background, the Code provides for a 10-year abatement for newly-constructed residential property under Section 1303.3 (the “Residential Abatement”) and a 10-year abatement for newly-constructed commercial property under Section 1303.4 (the “Commercial Abatement”). Prior to 2022, the Abatements were identical in all material aspects. Therefore, for most mixed-use projects, it was irrelevant whether the projects were classified as “residential” or “commercial.” In practice, guidance available on OPA’s website and the abatement application forms themselves indicated that “commercial” property for these purposes included property that generated income that was subject to the City Business Income and Receipts Tax (“BIRT”).

However, for abatement applications filed on or after January 1, 2022, the scope of the Residential and Commercial Abatements is different. We understand that OPA intends to look at the use of property by floor space, rather than whether the property is subject to BIRT, when determining the applicable abatement.

We believe that the Proposed Regulations should be amended to clarify how this policy will be applied in practice to newly-filed abatement applications.

1. How will Condominiums be Treated?

Under the Proposed Regulations, OPA will approve only a single Abatement application each newly constructed or rehabilitated project. Proposed Regulations § 301(a). OPA will determine which abatement applies based on the “predominant use of the newly constructed building’s assessable square footage,” with “predominant use” meaning “fifty percent (50%)

or more.” *Id.* § 302 (b)(1)-(2). It is not, however, clear how a mixed-use project that consists of multiple condominium units would be treated under the Proposed Regulations because it is not clear what constitutes a “property.”

For example, suppose a newly constructed building was divided into two condominium units with one commercial unit comprising 49% of the building’s assessable square footage and the other residential unit comprising remaining 51%. Under the Pennsylvania Condominium Act, a condominium unit “constitutes for all purposes a separate parcel of real estate,” including for “taxation and assessment.” 68 Pa. C.S. §§ 3105(a) and (b).

Because each condominium unit must be treated as a separate property, under Sections 301(a) and 302(a) of the Proposed Regulations, each unit should separately apply for and obtain its own abatement.¹ *See* Proposed Regulations §§ 301(a) (“Newly constructed and improved **properties** designed for both residential and non-residential uses (mixed-use properties) may be eligible for one temporary real estate tax exemption pursuant to §§ 19-1303.2, 19-1303.3 or 19-1303.4 of the Code.”); 301(a) (“Newly constructed mixed-use **property** may qualify either as a residential **property** for exemption pursuant to § 19-1303.4 or as non-residential **property** eligible for exemption pursuant to § 19-1303.3.”) (emphasis added).

But under Section 302(b), each unit may not receive a separate abatement because the units are in the same predominantly residential building. Section 302(b) uses the terms “property” and “building” interchangeably, which creates confusion for condominiums in which more than one property is located in the same building:

- (b) The predominant use of the newly constructed **building’s** assessable square footage shall determine the qualifying exemption.
 - (1) **Property** shall be considered residential **property** for purposes of [the Residential Abatement] if fifty percent (50%) or more of the newly constructed assessable square footage is dedicated to residential use.
 - (2) **Property** shall be considered residential **property** for purposes of [the Commercial Abatement] if fifty percent (50%) or more of the newly constructed assessable square footage is dedicated to non-residential use.

Proposed Regulations § 303(b)(1-2) (emphasis added).

Mixed-use condominiums are often employed by developer’s to legally separate commercial from residential uses, as the buyers and/or tenants for those spaces are often very different, even within the same building. Developers and lenders need to know which abatement will apply to which portions of a newly constructed project in order to properly forecast revenues and underwrite new projects.

¹ We note that OPA has historically required separate condominium units to each apply for an applicable abatement.

Suggested Changes

To make clear that a condominium unit should be treated as its own piece of property (as required by the Condominium Act) we suggest the following changes:

1. The term “building’s” in Section 302(b) be replaced with “property’s”.
2. The following be inserted after Section 302(b):
 “(c) The predominant use a newly constructed condominium unit shall be determined by the predominant use of such unit.

- (1) A condominium unit shall be considered residential property for purposes of § 19-1303.4 if fifty percent (50%) or more of the newly constructed assessable square footage of the condominium unit is dedicated to residential use.

- (2) A condominium unit shall be considered non-residential property for purposes of § 19-1303.3 if fifty percent (50%) or more of the newly constructed assessable square footage of the condominium unit is dedicated to non-residential use.”

3. The word “residential” be inserted before the word “condominium” in Section 304(a)(1).

4. The word “exclusively” be inserted before the word “available” in Section 304(a)(3).

2. When will the Residential Abatement Begin for Rental Units?

Under the Proposed Regulations, any property with more than fifty percent of its floor area devoted to apartments (*i.e.*, dwelling units rented to non-owners) qualifies only for the Residential Abatement.

The Residential Abatement begins “immediately following the date upon which settlement is made, **and** a required certificate of use and occupancy is issued on an eligible dwelling unit.” Code § 19-1303.4(5)(b) (emphasis added). This is in contrast to the Commercial Abatement, which begins “in the tax year immediately following the year in which the initial certificate of occupancy for the property is issued.” Code § 19-1303.3(b)(.1).

The commencement language for the Residential Abatement is not easy to apply in the case of a multi-unit rental property because there will be not be a “settlement” with respect to each individual unit. The Proposed Regulations do not address this issue.

Suggested Changes

We suggest that the Proposed Regulations be amended to clarify that the Residential Abatement will, in the case of multi-unit rental residential properties, be effective beginning January 1 of the calendar year following the year that the certificate of use and occupancy is issued with respect to the property.

We believe that this will be easy to implement and will be consistent with the commencement of the Commercial Abatement. Moreover, we believe that this language is consistent with the Code because the Code requires both a settlement *and* the certificate of use and occupancy.

3. Will All Portions of a Mixed-Use Property with a Predominant Residential Use be Eligible for the Developer's Abatement?

The Proposed Regulations do not address how OPA will treat a predominantly residential property under Act 135's 30-month abatement for residential construction (the "Developer's Abatement").

Before the Proposed Regulations' predominance test, OPA granted the Developer's Abatement for mixed-use projects on a percentage of floor area basis. So if a project was 75% residential, 75% of its value was abated during construction. Now that OPA intends to treat that same project as entirely residential for the purposes of assigning its 10-year abatement, will OPA also treat that same property as fully abated under the Developer's Abatement?

If OPA's position is that a property's predominant use governs whether it is residential or commercial, then it only seems fitting that a predominantly residential property should be fully abated under the Developer's Abatement. This approach is consistent with the text of the Developer's Abatement and the Residential Abatement, which use nearly identical language to describe the sorts of property to be abated. *Compare* 72 P.S. § 5020-205(b) (exempting "[n]ew single and multiple dwellings constructed for residential purposes . . . until (1) occupied, (2) conveyed . . . or, (3) thirty months from the day of the month after which the building permit was issued") *with* Phila. Code § 19-1303.4 (defining residential construction as "the building of dwelling units").

In any case, the Proposed Regulations do not address this issue and we ask that OPA provide clarity.

4. Are the Proposed Regulations Retroactive?

Finally, we understand that the Proposed Regulations are being adopted to clarify how OPA will classify new projects now that the Residential and Commercial Abatements differ in material ways. However, the Proposed Regulations do not specify whether they are applicable only to Abatement applications filed on or after January 1, 2022.

cc: Commissioner James Leonard