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16 MAP 2022

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 16 MAP 2022

GM BERKSHIRE HILLS LLC and
GM OBERLIN BERKSHIRE HILLS LLC,

Appellants,

v.

BERKS COUNTY BOARD OF ASSESSMENT APPEALS and
WILSON SCHOOL DISTRICT,

Appellees.

BRIEF FOR APPELLANTS

On Appeal from the July 8, 2021, Order of the Commonwealth Court of Pennsylvania, at 930 C.D. 2020, Affirming the January 14, 2020, and August 18, 2020, Orders of the Berks County Court of Common Pleas, at No. 18-18627.

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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 42 Pa. C.S. § 724(a) and the Court's order of February 1, 2022, granting allowance of appeal as to two issues. The February 1, 2022, order is attached at Appendix A and the issues as to which appeal was allowed are set forth verbatim in the Statement of Questions Presented below.

ORDER IN QUESTION

Taxpayers appeal from the order of the Commonwealth Court entered July 8, 2021, which reads, "AND NOW, this 8th day of July, 2021, the order of the Court of Common Pleas of Berks County is AFFIRMED."

STATEMENT OF SCOPE AND STANDARD OF REVIEW

In reviewing a decision in a tax assessment appeal, the Court will reverse if the trial court committed an error of law or abused its discretion, or if the decision is unsupported by the evidence. *Tech One Assocs. v. Board of Property Assessment, Appeals & Review*, 53 A.3d 685, 696 (Pa. 2013). Questions of law are reviewed *de novo* and the scope of review is plenary. *Id.* (citing *Clifton v. Allegheny County*, 969 A.2d 1197, 1209 n.17 (Pa. 2009)).

STATEMENT OF QUESTIONS PRESENTED

1. Do a school district's selective real estate tax assessment appeals violate the Uniformity Clause of the Pennsylvania Constitution when the school district chooses only recently-sold properties for appeal, leaving most properties in the district at outdated base-year values?

Answered below: No.

Suggested Answer: Yes.

2. Do a school district's selective real estate tax assessment appeals violate the Uniformity Clause of the Pennsylvania Constitution when the school district chooses only certain recently-sold properties that would generate a minimum amount of additional tax revenue for appeal, leaving most properties in the district at outdated base-year values?

Answered below: No.

Suggested Answer: Yes.

STATEMENT OF THE CASE

I. Form of the Action

This appeal arises from real estate tax assessment appeals initiated by appellee Wilson School District (the "School District") before the Berks County Board of Assessment Appeals (the "Board") with respect to the 2019 assessments (the "2019 Assessments") of properties owned by appellants GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC (collectively, the "Taxpayers") located at 2902 Wyoming Drive (the "Wyoming Drive Property") and 2800 Wilson School Lane (the "Wilson Lane Property") in Spring Township, Berks County (collectively, the "Property"). The Taxpayers appeal from the final order of the Commonwealth Court affirming the order of the Berks County Court of Common Pleas, which disposed of the Taxpayers' appeal from the Board's decisions increasing the assessments of Taxpayers' properties.

II. Procedural History

On the School District's appeal, the Board increased the 2019 Assessments for the Wyoming Drive Property to $17,651,600 and for the Wilson Lane Property to $19,509,700. R. 4a. Collectively, the 2019 Assessments were increased to $37,161,300, approximately equal to the amount for which the Taxpayers bought the Property, adjusted by the Common Level Ratio ("CLR").[1] R. 4a.

[1] The CLR is calculated by the State Tax Equalization Board ("STEB") annually for each county. The CLR represents STEB's estimate of the average assessed-to-

Taxpayers appealed to the Court of Common Pleas. R. 3a. Taxpayers asserted that the School District's appeals of the 2019 Assessments violated the Uniformity Clause of the Pennsylvania Constitution, Pa. Const. art. VIII, § 1, and the Equal Protection Clause of the United States Constitution, U.S. Const. amend. XIV, § 1, by targeting the Property for a tax increase solely because the Property had sold recently. R. 4a. Taxpayers further asserted that the appeals of the 2019 Assessments violated the Uniformity Clause by imposing a selective tax increase on the Taxpayers, while leaving most properties in the county at outdated, base-year values. R. 4a. Taxpayers also asserted that the assessed values set by the Board exceeded the Property's actual market value, adjusted by the CLR. R. 4a.

The trial court bifurcated the constitutional and valuation issues. The court held a hearing on Taxpayers' constitutional objections and rejected them. *See* Appendix A. In relevant part, the court held that, while the School District's appeals of only some properties that had been sold recently and met a certain minimum differential between assessment and adjusted current market value created a sub-classification of real property, a practice generally prohibited by repeated decisions of this Court under the Uniformity Clause, the appeals did not violate the Uniformity Clause. Tr. Ct. Op. at 14-15.

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market value ratio of properties in the county for that year. *Clifton*, 969 A.2d at 1215-16. As the Court has explained, the CLR "is not indicative of uniformity" of assessments in a county. *Id.* at 1216.

Following the decision on the constitutional issues, the parties agreed to reduce the 2019 Assessments of the Property set by the Board by approximately $9,000,000, to a combined total of $28,359,000, subject to Taxpayers' right to further appeal the constitutional issues. *See* Appendix B.[2]

Taxpayers then filed an appeal to the Commonwealth Court, which affirmed. Taxpayers petitioned this Court for allowance of appeal, which was granted.

III. Opinions Below

The Berks County Court of Common Pleas (Honorable Scott E. Lash) issued an unreported order and accompanying opinion dated January 14, 2020, denying Taxpayers' challenge to the constitutionality of the assessment appeals filed by the School District. The January 14, 2020, order became final when the trial court entered an order resolving all remaining issues on August 18, 2020. The January 14, 2020, order and accompanying opinion (the "Tr. Ct. Op.") and the August 18, 2020, order are attached as Appendices B and C, respectively.

A panel of the Commonwealth Court (Honorable Christine Fizzano Cannon, Patricia A. McCullough, and Anne E. Covey) entered an order and accompanying opinion affirming the trial court's orders. The Commonwealth Court's opinion and order ("Cmwlth. Op.") is attached at Appendix D and is reported at 257 A.3d 822.

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[2] The parties also stipulated to the assessments for tax year 2020, setting them almost $3,000,000 lower than the agreed assessments for 2019.

IV. Statement of Facts

A. Berks County Assessments

Berks County's last countywide reassessment became effective in 1994. Tr. Ct. Op. at 11. The 2019 CLR for Berks County was 68.5%. Tr. Ct. Op. at 4.

B. The Property

The Property consists of two adjoining parcels totaling 35.172 acres. It is improved with a multi-family apartment complex consisting of 47 buildings and 408 residential rental units comprised of a number of detached 1-4 bedroom townhomes and apartments. Tr. Ct. Op. at 3; R. 3a. Taxpayers purchased the Property in November 2017 for $54,250,000. Tr. Ct. Op. at 3.

As of 2017, when Taxpayers purchased the Property, the assessment for the Wyoming Drive Property was $5,177,000 and the assessment for the Wilson Lane Property was $5,721,700, for a combined assessment of $10,898,700. R. 4a. Berks County maintained the same assessments for the Property through tax year 2019, collectively, $10,898,700. Tr. Ct. Op. at 3.

C. The School District's Selective Tax Appeal Program

The School District, seeking to raise additional revenue without having to pass a generally-applicable tax increase, passed a resolution authorizing it to pursue selective assessment appeals to impose higher taxes only on certain taxpayers (the "Resolution"). R. 37a-38a. The Resolution permitted the appeal of properties that "are potentially underassessed by a minimum of $150,000, calculated by applying

the common level ratio to the recent sales price, and comparing the resulting figure to the current assessed value." R. 38a.

To select properties to appeal, the School District's Chief Financial Officer reviewed monthly reports from STEB showing recent sales of properties within the School District. R. 10a-12a. In most cases (but not all), if the STEB transaction report reflected that a deed had been recorded showing a property had been sold for an amount, adjusted by the CLR, that exceeded the property's assessment by at least $150,000, the School District filed an assessment appeal. R. 14a.

The School District made no effort whatsoever to consider any property for an appeal if it had not been sold recently and appeared on a monthly STEB report. R. 18a. The School District does not do any analysis of the fair market value of properties within the School District other than comparing the sale prices, adjusted by the CLR, for recently-sold properties to those properties' assessments.[3] R. 22a. For example, the School District would not appeal a property that was right next to one that had sold for an amount that met the Resolution's threshold, even if the adjacent property was identical to the one that had sold. R. 20a-21a. The School

[3] The School District did not consider the degree to which a property's assessment deviated from its adjusted market value. Under the School District's policy, it would appeal the assessment of a property worth an adjusted market value of $10,000,000 if it was assessed at $9,850,000, or 98.5% of adjusted market value, but would not appeal the assessment of a property worth an adjusted market value of $150,000 that was assessed at $10,000, or 6.7% of its adjusted market value.

District also would not appeal a property's assessment if the property had been sold and appeared on a STEB report but applying the CLR to the sale price resulted in a difference of only $149,900 more than the assessment.[4] R. 20a.

V. The Commonwealth Court Opinion

The Commonwealth Court affirmed the trial court's decision that the School District's appeals did not violate the state or federal constitution. Addressing the Uniformity Clause, the Commonwealth Court acknowledged the cardinal principles this Court has articulated with respect to real estate tax uniformity: (1) "'all property in a taxing district is a single class,'" (2) the "'Uniformity Clause does not permit the government, including taxing authorities, to treat different property sub-classifications in a disparate manner,'" and (3) the Uniformity Clause prohibits "'any intentional or systematic enforcement of the tax laws, and is not limited solely to wrongful conduct.'" Cmwlth. Op. at 9, 257 A.3d at 829 (quoting *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 974 (Pa. 2017)). Despite acknowledging these principles, the Commonwealth Court declined to apply them, deciding that the School District's policy of considering for assessment appeals only properties owned by a sub-class of property owners (recent

[4] The School District's policy would not even apply to all new owners of property, since it would exclude from potential appeals transfers for nominal value, such as transfers pursuant to an estate, regardless of whether the adjusted fair market value of the property exceeded its assessed value by at least $150,000.

purchasers), then further selecting only some properties from that sub-class based on their revenue potential, did not violate the basic principles articulated by this Court.

The Commonwealth Court principally relied on the idea that the School District did not "differentiate properties based on property type (commercial vis-à-vis residential)." Cmwlth. Op. at 18; 257 A.3d at 834. In so doing, the court narrowly cabined *Valley Forge Towers* and announced a concept new to Uniformity Clause jurisprudence – that the Uniformity Clause precludes treating taxpayers differently based on "qualitative" factors, but that treating taxpayers differently based on "quantitative" factors is permitted. In the Commonwealth Court's view, there "is a difference, however, between selection based on property type, a qualitative approach that *Valley Forge Towers* bars, and selection based on recent sales prices, which are quantitative and reflective of a property's accurate present value regardless of type." Cmwlth. Op. at 20; 257 A.3d at 834. Thus, the court held that the School District's consideration only of properties recently purchased for appeals did not violate the Uniformity Clause because "[u]sing recent sales prices as part of the selection of properties for appeals is a quantitative method of reasonably ascertaining a property owner's fair share of the tax burden" and "a purely economic approach that is practical for the District yet does not improperly differentiate based on property type." Cmwlth. Op. at 20-21; 257 A.3d at 835.

The Commonwealth Court also rejected Taxpayers' argument that the School District's use of a minimum expected tax increase to further differentiate among recent purchasers of property violated the Uniformity Clause. Based on what it asserted this Court "implied" in *Valley Forge Towers* and relying on its own non-precedential opinion,[5] the Commonwealth Court wrote that the "current law of Pennsylvania" permitted school districts to select properties to appeal based on how much additional tax revenue the districts believed an appeal would yield. Cmwlth. Op. at 18-19; 257 A.3d at 834. Without citing this Court's holding that "[f]or over a century, our Court has steadfastly adhered to an interpretation of the Uniformity Clause that classifications based solely on the quantity or value of the property being taxed are arbitrary and unreasonable, and, hence, forbidden," *Nextel Communications, Inc. v. Commonwealth, Dep't of Rev.*, 171 A.3d 682, 696 (Pa. 2017), the Commonwealth Court asserted that the Court's precedents did not bar the School District from subjecting only a sub-class of property owners to appeals based on the potential revenue the appeals could yield for the District. The court dismissed the Uniformity Clause principles articulated in this Court's decisions in *Nextel* and *Mount Airy # 1, LLC v. Pennsylvania Dep't of Rev.*, 154 A.3d 268 (Pa. 2016), as

[5] The court noted that it had issued a precedential opinion on this topic in *Kennett Consolidated Sch. Dist. v. Chester County Bd. of Assessment Appeals*, 228 A.3d 29 (Pa. Cmwlth. 2020), but that this Court had granted review of the *Kennett* case and the appeal was then pending. Cmwlth. Op. at 16; 257 A.3d at 833. This Court subsequently dismissed *Kennett* as improvidently granted. 259 A.3d 890 (Pa. 2021).

inapposite because they did not involve real estate taxes and supposedly involved differences in tax rates rather than tax bases.[6] Cmwlth. Op. at 22-23; 257 A.3d at 835-36.

SUMMARY OF ARGUMENT

For generations, this Court has held that the Uniformity Clause of the Pennsylvania Constitution requires all real estate in a taxing district to be considered part of a single class that must be treated uniformly for property tax purposes. As the Court put it succinctly in *Clifton*, "real property **is** the classification." 969 A.2d at 1212 (emphasis in original). In 2017, the Court made it plain in *Valley Forge Towers* that the Uniformity Clause governs taxing authorities, such as school districts, when taking appeals of property assessments and precludes taxing authorities from treating sub-classes of real property taxpayers in their districts differently.

Despite the repeated holdings of this Court, the School District subjected a sub-class of real property taxpayers to different treatment than the rest of the taxpayers in the district. The School District appealed the assessments only of certain properties that had sold recently. The School District did not even consider for appeal any properties that had not sold recently, regardless of the relationship of

[6] The Commonwealth Court also rejected the Taxpayers' equal protection argument. The Court declined review of this issue.

those properties' assessments to their present market value. Thus, the School District treated sub-class (A), new owners, whose property assessments were subjected to appeal and revision based on their appreciated market value, different than sub-class (B), longer-term owners, whose property assessments were not subject to appeal or revision based on their appreciated market value.

The School District's differential treatment of a sub-class of real property taxpayers plainly violates this Court's constitutional command to treat all real property as a single class. The Court should reverse the Commonwealth Court's decision and reinstate the 2019 Assessments of the Property to confirm again that any sub-classification of real estate for tax assessment purposes that results in differential treatment violates the Uniformity Clause.

The School District further subdivided the sub-class of new property owners by appealing the assessments only of those recently-sold properties that the School District believed were of sufficient value to generate an additional amount of tax revenue upon being reassessed to be "worth" the School District's effort to appeal. The use of a monetary threshold to identify properties to appeal also creates a sub-classification of real estate that violates the Uniformity Clause. As this Court has held in various cases for over a century, the difference in value of property subject to tax cannot be a basis to treat taxpayers in the same class differently. But in this case and other recent decisions, the Commonwealth Court has allowed school

districts to choose property assessments to appeal based on their value and potential to generate a certain amount of additional tax revenue. The Court should reverse the Commonwealth Court's decision on this point as well to reaffirm the Court's longstanding commitment to the principle that taxpayers cannot be subjected to differing treatment because of the quantity or value of their property subject to tax.

ARGUMENT

I. Because All Real Property Is a Single Class That Must Be Treated Uniformly, the School District's Selective Appeals of Assessments of Properties That Were Sold Recently Violate the Uniformity Clause.

For over a century, this Court has held that the Uniformity Clause requires all real estate in a county to be treated uniformly as a single class and that actions by the government that treat sub-classes of real property taxpayers differently are prohibited. The School District's appeals of the assessments of only certain recently-sold properties violates this principle and, therefore, the Uniformity Clause by treating a sub-class of taxpayers – recent purchasers – differently than other taxpayers in the same class – longer-term property owners – by subjecting only the sub-class to assessment appeals.

There can be little argument that the School District treated the sub-class of recent purchasers differently than longer-term owners. The only properties the School District even considered for assessment appeals were those that appeared on a STEB report because they were sold recently. Only those recently-sold properties

then were subjected to any review by the School District for potential appeal by comparing their presumed current market value to their assessments. Properties that had not sold recently and did not appear on a STEB report underwent no review and were not subjected to appeal – regardless of any disparity between their current market value and their assessments. Most importantly, the School District's appeals subjected only some recently-sold properties to tax increases based on their current market values, while other properties in the county generally continued to be taxed based on 25-year old assessments of their market values.

The Commonwealth Court, however, blessed the School District's differential treatment of new owners. In doing so, the Commonwealth Court (1) created from whole cloth an exception to the Court's uniformity decisions for some undefined and unworkable set of "quantitative" factors; and (2) made the Court's specific holding in *Valley Forge Towers* that appealing only certain property types violates uniformity the *only* uniformity limit on taxing authority appeals, rather than a specific application of the general principles the Court repeatedly has articulated. In addition, by allowing school districts to cause recently-sold properties to be reassessed based on their current market values, while leaving unsold properties at base-year values, the Commonwealth Court's decision is inconsistent with the governing statutes, which do not permit interim reassessment of a property merely because it was sold.

The Uniformity Clause provides:

> All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under the general laws.

Pa. Const. art. VIII, § 1. The Court consistently has interpreted the Uniformity Clause to be "as broad and comprehensive as it could possibly be," *Amidon v. Kane*, 279 A.2d 53, 58 (Pa. 1971), and explained that it "limit[s] the manner in which otherwise legitimate statutory powers," including assessment appeals by taxing authorities, "may be utilized in practice," *Valley Forge Towers*, 163 A.3d at 978. If a tax scheme violates the principle of uniform treatment of taxpayers subject to the tax, it is unconstitutional regardless of whether it seems "just, expedient, necessary or wise." *Amidon*, 279 A.2d at 55.

With respect to real property taxation, the Court has explained that "real property **is** the classification." *Clifton*, 969 A.2d at 1212 (emphasis in original). Accordingly, the rational basis standard applied in other contexts does not apply to uniformity challenges to real estate taxation, *Valley Forge Towers*, 163 A.3d at 977, and *any* classification of real property for assessment purposes resulting in differential treatment is suspect, *Clifton*, 969 A.2d at 1213.

Furthermore, while government should strive to equalize the percentage of market value at which all properties are assessed, the Court long has held that the Uniformity Clause requires "uniformity of method in determining what share of the

burden each taxable subject must bear." *Delaware, L. & W. R. Co.'s Tax Assessment*, 73 A. 429, 430 (Pa. 1909). Indeed, uniform treatment of taxpayers, not achieving true market value for an individual property, "is to be preferred as the just and ultimate purpose of the law." *In re Brooks Building*, 137 A.2d 273, 276 (Pa. 1958) (internal quotation marks and emphasis omitted). Thus, regardless of whether a taxing authority's appeal could bring the subject property's assessment closer to the CLR for the county, a selective appeal that targets a sub-class of taxpayers is unlawful because the Uniformity Clause is "independently harmed by a systematic course of disparate treatment relative to a particular sub-classification of property." *Valley Forge Towers*, 163 A.3d at 979.

The Court consistently has relied on two fundamental precepts in applying the Uniformity Clause to real estate taxation. First, all real estate in a taxing district is part of a single class that must be treated uniformly. Second, systematic disparate enforcement of tax laws based on property sub-classification, even absent wrongful conduct, is constitutionally precluded. *Valley Forge Towers*, 163 A.3d at 974.

The Court summed up these principles in *Valley Forge Towers*, but the principles did not originate in that case, nor were they fashioned only to support the holding there. In particular, the Court has repeated the principle that all real estate in a taxing district is a single class in *Clifton*, 969 A.2d at 1212 (collecting cases), and other cases dating back as far as *Delaware, L. & W. R.*, 73 A. at 432. And the

principle that uniformity bars disparate enforcement of tax laws based on property sub-classification, even absent wrongful conduct, was set forth previously in *Downingtown Area Sch. Dist. v. Chester County Bd. of Assessment Appeals*, 913 A.2d 194, 201 n.10 (Pa. 2006), and is grounded in federal equal protection jurisprudence, which forms the floor for Pennsylvania uniformity law, *id.* at 200-01.

Applying the principles it summarized, the Court in *Valley Forge Towers* specifically disapproved of a school district appeal policy that targeted only commercial properties for appeal but ignored residential properties. 163 A.3d at 978. The Commonwealth Court in this case, however, construed *Valley Forge Towers* narrowly to bar only appeals that differentiate among real estate in a district based on how properties are used, *i.e.*, as commercial, residential, or otherwise. By doing so, the Commonwealth Court effectively limited the application of *Valley Forge Towers* to its specific circumstances and ignored the more generally applicable principles that motivate the *Valley Forge Towers* decision and other cases.

Neither *Valley Forge Towers*, nor other cases, are so limited. As the Court explained in *Clifton*, "judicial review of uniformity challenges . . . of property taxation often needs only to focus on the first prong of the uniformity analysis," *i.e.*, whether there is a classification of properties, because such a classification most likely violates uniformity. 969 A.2d at 1213. *Valley Forge Towers* does not retreat

from or limit this principle; it merely applies the principle to the facts of that case. Other cases have applied the rule against creating sub-classes of properties not just to property use, but to other sub-classifications as well. *See Clifton, supra* (holding reassessment of only certain neighborhoods violated uniformity); *City of Lancaster v. County of Lancaster*, 599 A.2d 289, 300 (Pa. Cmwlth. 1991) (*en banc*) (same); *City of Harrisburg v. Dauphin County Bd. of Assessment Appeals*, 677 A.2d 350, 355 (Pa. Cmwlth. 1996) (*en banc*) (reassessment of only recently remodeled properties violated uniformity).

The Commonwealth Court's decision in this case, however, attempts to add another gloss to this Court's simple no-classification principle by asserting that classifications based on "quantitative" or "economic" factors do not violate the Uniformity Clause. Cmwlth. Op. at 20-21; 257 A.3d at 834. This holding finds no basis in the Constitution or this Court's decisions and is unworkable.

As an initial matter, it is not apparent why a property's recent sale constitutes a "quantitative" factor, rather than a "qualitative" one. The word "quantitative" implies some difference in a quantity or amount on which to distinguish properties. If a property was sold recently and appears on a STEB transaction report – the criteria applied by the School District to distinguish the sub-class of properties it would consider for appeal from other properties in the district – is not a numerical or "quantitative" difference between the properties considered for appeal and

properties not considered for appeal. Accordingly, applying the Commonwealth Court's own analysis to the School District's policy, it is hard to understand how recent sale and appearance on a STEB report differs from property use, neighborhood, or remodeling, all rejected bases for sub-classifying properties, on a "quantitative" versus "qualitative" dichotomy.[7]

More importantly, the text of the Uniformity Clause itself certainly provides no basis for the Commonwealth Court's distinction. The Clause is written comprehensively, to mandate uniform taxation "upon the same class of subjects." Pa. Const. art. VIII, § 1. Nothing in the text of the Uniformity Clause suggests that a class that is subject to the same tax may be subdivided based on some "quantitative" or "economic" factor.

Indeed, this Court has never held that classifying real property based on a "quantitative" factor was consistent with the constitutional command that all properties in a taxing district be treated uniformly as part of a single class. To the

[7] Taxpayers acknowledge that, *after* creating a sub-class of properties subject to potential appeals based on being sold recently, the School District then created a further disfavored sub-class of the recently sold properties based on the School District's estimate of the difference between assessment and adjusted sale price, which could be considered a "quantitative" factor. But applying a "quantitative" factor to an already improperly created sub-class to further subdivide the sub-class does not rescue the initial unconstitutional sub-classification. Nothing in *Valley Forge Towers*, for example, suggests that a taxing authority's policy of appealing only commercial properties would be saved if the authority chose among the commercial properties based on some quantitative analysis.

contrary, the Court consistently has rejected such distinctions as violating uniformity. For more than 100 years, the Court "has steadfastly adhered to an interpretation of the Uniformity Clause that classifications based solely on the quantity or value of the property being taxed are arbitrary and unreasonable, and, hence, forbidden." *Nextel*, 171 A.3d at 696. The Commonwealth Court's holding here violates this long-held principle.

Moreover, the Commonwealth Court's holding would authorize a broad variety of classifications of real properties. If allowed to stand, the Commonwealth Court's holding would authorize the government to treat large properties differently than small properties, or high-value properties differently than low-value properties. The possible classifications would be limited only by local government's imagination.[8] And each school district and municipality in a county could decide for itself each year which sub-classes to favor and which to disfavor, causing further non-uniform treatment of taxpayers within the same county.

The Commonwealth Court's "qualitative" versus "quantitative" approach also is unworkable in practice. Is appealing assessments only in a certain neighborhood because that neighborhood has experienced a rising market a "qualitative" approach

[8] One could imagine different sub-classes based on "quantitative" factors such as square footage of improvements, number of residents, number of parking spaces, age of improvements, size of carbon footprint, and many more, depending on what factors a particular government body wanted to consider.

because it is based on geography or a "quantitative" approach because it relies on increased market valuations? The Commonwealth Court's decision provides no guidance on how to apply the new Uniformity Clause analysis it proffers to justify sub-classifying real property.

Furthermore, a taxing authority's ability to file selective assessment appeals only against recently sold properties runs contrary to the statutory framework of the Consolidated County Assessment Law, 53 Pa. C.S. § 8801 *et seq.* In a base year system, such as that used in Berks County, all properties are assessed at their current market value in a countywide reassessment in the chosen base year, and the base year assessments then are used each year until the next countywide reassessment. Indeed, counties do "not consider market fluctuations subsequent to the base year" in setting assessments for tax years after the base year. *Clifton*, 969 A.2d at 1203.

53 Pa. C.S. § 8817 permits counties to reassess a property between countywide reassessments only if the property is subdivided or improved, or existing improvements are removed or destroyed. Sale of a property does not justify an interim reassessment. Allowing a taxing authority to target only recently sold properties for selective assessment appeals when such properties would not otherwise be eligible for interim reassessment runs contrary to the protections provided to property owners in the Consolidated County Assessment Law. The Commonwealth Court's holding in the present matter creates a constitutional

loophole by allowing one state actor (the taxing authority) to effectively spot re-assess a recently sold property through an appeal when another state actor (the county) is precluded from doing so.

Finally, rejecting the School District's selective appeals here does not mean that Taxpayers will pay less than their "fair share" of taxes. A taxpayer's fair share of the tax burden cannot be determined in a vacuum. Rather, each taxpayer's fair share can be determined only by comparison to a standard applied uniformly to all taxpayers in the jurisdiction.

Here, Berks County set the standard against which each taxpayer's "fair share" must be analyzed. The standard Berks County chose is 1994 market value, and Berks County has continued to use 1994 market value as the prevailing standard for assessments in the County each year through the present.

Measured against the standard chosen by the County and generally applied to assessments in the County, Taxpayers will pay their "fair share" only if the decision below is overturned and the 2019 Assessments of the Property are reinstated. Like other taxpayers in the County generally, Taxpayers were assessed based on 1994 market value and paid tax based on those assessments. Applying a uniform standard to all taxpayers is the constitutional command; the School District's selective appeals upend uniformity and violate the Constitution.

Any claim that, if the School District's appeals are dismissed, Taxpayers

would pay less than their fair share, depends on a comparison of Taxpayers' assessments to *current* market value. But that comparison is inapt because Berks County does not set assessments at current market value, or, even, a percentage of current market value. The School District's appeals here, which re-set the Property's assessments at a percentage of current market value simply because the Property was sold recently, improperly apply a different standard to the Property than to other properties in the County by taxing the Property on its appreciated value, while properties that have not been sold avoid being taxed on their appreciated value. Such differential treatment is not a uniform method of taxation, as required by the Uniformity Clause, and cannot stand.

Simply put, the School District's methodology at issue here creates two classes of real property – A) properties that have sold recently and B) properties that have not sold – and treats the recently-sold properties differently than the properties that have not sold. Treating sub-classes of real property differently violates the Uniformity Clause principle that all real property is a single class that must be treated the same. Accordingly, the School District's selective appeals here are unlawful and must be dismissed and the Property's 2019 Assessments should be reinstated.

II. A Taxing Authority's Use of a Minimum Anticipated Increase in Tax Revenue To Select Properties for Appeal Also Violates the Uniformity Clause's Mandate To Treat All Real Property the Same.

In addition to creating a sub-class of properties that were sold recently to

consider for assessment appeals, the School District further subdivided the sub-class by choosing to appeal only those recently-sold properties that the School District projected would generate at least $3900 in annual additional tax revenue for the District.[9] R. 15a-16a. In so doing, the School District again chose to treat certain properties differently by subjecting a sub-class of properties to assessment appeals to increase their assessments based on their current market values, while other properties were permitted to remain at their 1994 base-year values.

This Court left open in *Valley Forge Towers* the question of the lawfulness of a taxing authority's use of a projected minimum revenue gain, often referred to as a "monetary threshold," to select properties for appeal because "[s]uch methodologies [were] not [ ] before the Court" in that case. 163 A.3d at 979. Subsequently, the Commonwealth Court, in *Kennett*, approved the use of monetary thresholds, 228 A.3d at 41, and this Court granted review, but later dismissed the case as improvidently granted, 259 A.3d 890.

In this case, the Commonwealth Court affirmed the School District's use of a minimum anticipated increase in tax revenue, or monetary threshold, to select among recently sold properties to subject to assessment appeals. The court, recognizing that, at the time, its precedential opinion in *Kennett* was under review by this Court,

[9] The $3900 in annual additional tax revenue equates to approximately a $150,000 increase in assessment. R. 15a.

relied largely on certain non-precedential opinions it had issued to conclude that a school district's use of a minimum projected revenue gain to identify a sub-class of properties to appeal is permissible "so long as that method does not differentiate properties based on property type (commercial vis-à-vis residential) or another constitutionally infirm basis." Cmwlth. Op. at 18; 257 A.3d at 834.

In *Kennett*, the Commonwealth Court held that a school district's use of a projected minimum revenue gain did not violate uniformity because the school district used the threshold "for the purpose of making prudent fiscal decisions, and *not* for the purpose of discriminating against sub-classes of properties." 228 A.3d at 41 (emphasis in original). The court concluded, "[b]ecause District deliberately ignored the property type and focused only on its fiscal considerations, District did not violate the Uniformity Clause." *Id.*

None of the rationales offered by the Commonwealth Court in this case or in *Kennett* are consistent with this Court's uniformity jurisprudence. Fundamentally, both decisions ignore the repeatedly articulated principle that all real estate is a single class entitled to uniform treatment. Appealing the assessments of only certain properties in the county to raise their taxes based on their appreciated market value while other properties remain at base year values unquestionably treats the appealed sub-class of properties differently, and subjects them to taxation on a different

standard, than the rest of the properties in the county.[10]

The Commonwealth Court's conclusion in *Kennett* and in this case that a school district's use of an anticipated minimum additional tax recovery to determine which assessments to appeal does not violate the Uniformity Clause because it is not "for the purpose of discriminating" against certain property owners misconstrues this Court's prior holdings. A taxing authority's "purpose" or motive in creating a sub-class of taxpayers subjected to assessment appeals, while allowing most property assessments to remain undisturbed, is irrelevant to the Uniformity Clause analysis. Instead, the Uniformity Clause's restrictions apply to "any intentional or systematic enforcement of the tax laws," and are "not limited solely to wrongful conduct." *Valley Forge Towers*, 163 A.3d at 975; *Downingtown*, 913 A.2d at 201 n.10. The School District's appeals here are "intentional" and "systematic" methods

[10] Each school district and municipality is permitted to set its own appeal policy, and the value thresholds adopted can vary widely. For example, the School District here set a threshold of a $150,000 increase in assessment, while the school district in *Kennett*, 228 A.3d at 31, set a $1,000,000 threshold. Permitting each school district and municipality in a county to set its own value threshold for taking appeals introduces another element of disuniformity by subjecting properties within the same county – all of which are part of the same class and subject to tax by the county – to differing risk of appeal and interim assessment increases. Furthermore, taxing authorities are free to change their threshold each year, which also can cause disuniform treatment. For example, the School District could change its threshold for next year to $500,000, which means that, while a property that sold for an adjusted market value of $450,000 more than its assessment in 2019 would have been subject to appeal and interim increase in assessment and tax, another property that sold for the same adjusted differential next year would not be subject to appeal and increase in assessment and tax, allowing it to remain at its base year assessment.

of enforcing the tax laws that treat similarly situated taxpayers differently, and whether the School District filed the appeals "for the purpose of discriminating" against the Taxpayers is immaterial under the Uniformity Clause.

Furthermore, the Commonwealth Court's approval of the School District's choice to appeal assessments only if they met a certain threshold for an anticipated increase in tax revenue is inconsistent with this Court's decisions that, for over a century, consistently have struck down tax schemes that classify property subject to tax by the property's quantity or value. The Court has twice reaffirmed this long-held principle recently, in *Mount Airy*, 154 A.3d at 275, and *Nextel*, 171 A.3d at 696-97.

The Court articulated the principle as early as 1899 in *Cope's Estate*, 43 A. 79 (Pa. 1899). In that case, the Supreme Court considered the application of an inheritance tax that excluded the first $5,000 of estate property from taxation. *Id.* at 80. The Court observed that the practical effect of this tax would exempt "90 to 95 per cent of the estates of decedents" and that five to ten percent of estates would be subject to a 2% tax. *Id.* at 82. The Court held that the "money value of any given kind of property . . . can never be made a legal basis of subdivision or classification for the purpose of imposing unequal burdens on [similarly-situated] classes." *Id.* The Court reasoned that the tax violated the Uniformity Clause because "[a] pretended classification, *that is based solely on a difference in quantity of precisely*

the same kind of property, is necessarily unjust, arbitrary, and illegal." *Id.* at 81 (emphasis added). Applying similar reasoning, the Court struck down as violating the Uniformity Clause, among others, the graduated income tax, *Kelley v. Kalodner*, 181 A. 598, 602 (Pa. 1935), an income tax based on a facially equal rate of tax, but using the federal definition of income, which caused variation in the tax basis, *Amidon*, 279 A.2d at 60, and an occupational privilege tax assessed only on those earning more than $600, *Saulsbury v. Bethlehem Steel Co.*, 196 A.2d 664, 666 (Pa. 1964).

In *Mount Airy*, the Court reiterated these longstanding rules. There, the Court considered a casino's Uniformity Clause challenge to the "local share assessment" of the Pennsylvania Race Horse Development and Gaming Act. 154 A.3d at 271. The statute provided that a non-Philadelphia casino must pay a municipal local share assessment of the greater of 2% of its gross terminal revenue or $10 million. *Id.* Mount Airy challenged the municipal local share assessment because the statute imposed different effective tax rates on casinos with a gross terminal revenue over $500 million and those with a gross terminal revenue under $500 million. *Id.* at 272.

The Court held the statute unconstitutional. *Id.* at 274. The Court recognized "the basic principle that the money value of any given kind of property can never be made a legal basis for subdivision or classification for the purpose of imposing unequal burdens on similarly situated classes." *Id.* at 275 (internal quotation marks

and alterations omitted). Because the statute treated taxpayers in the same class differently depending on the value of their property subject to tax, the Court held that the statute violated the Uniformity Clause. *Id.* at 276.

The Court again rejected the use of differences in the monetary value of property subject to tax to treat taxpayers in the same class differently in *Nextel*. In that case, Nextel challenged, under the Uniformity Clause, the Revenue Code's limitation of the net loss carryover deduction to the greater of 12.5% of the year's income or $3 million. *Nextel*, 171 A.3d at 685. The Court noted that, "[f]or over a century, our Court has steadfastly adhered to an interpretation of the Uniformity Clause that classifications based solely on the quantity or value of the property being taxed are arbitrary and unreasonable, and, hence, forbidden." *Id.* at 696. Applying this principle, the Supreme Court affirmed the Commonwealth Court's holding that the net loss carryover, in its effect, violated the Uniformity Clause because, by dividing taxpayers based solely on the value of their property subject to tax, it created an "arbitrary and unreasonable classification" that was unlawful. *Id.* at 698-99.

The repeated decisions of this Court undermine the Commonwealth Court's holding that the School District's appeals here were lawful. The School District's appeal policy used the monetary value of the property subject to tax to create a sub-class of taxpayers who were treated differently than other taxpayers in the county. The Taxpayers, along with certain others, were subjected to appeals so that their

assessments were increased based on current market value, while most property assessments in the county remained at 25-year-old assessments, regardless of how much the market value of the properties had changed.

The Commonwealth Court mentioned *Mount Airy* and *Nextel*, but ignored the principle on which those cases were decided – that "classifications based solely on the quantity or value of the property being taxed are arbitrary and unreasonable, and, hence, forbidden." *Nextel*, 171 A.3d at 696. Instead, the court attempted to distinguish *Mount Airy* and *Nextel* and cabin them to their facts. The several reasons the court offered to distinguish this Court's decisions do not pass muster.

First, the Commonwealth Court suggested that the principles articulated in *Mount Airy* and *Nextel* only applied to matters involving differing tax rates. Cmwlth. Op. at 22-23; 257 A.3d at 836. But in *Nextel*, for example, the tax rate applied to the favored taxpayers and the disfavored taxpayers was the same – the problem was the disparate allowance of a deduction from income, a matter which plainly affected the tax basis to which the tax was applied. 171 A.3d at 685-86; *see also*, *Amidon*, 279 A.2d at 60 (rejecting use of federal definition of income because it caused variation in the tax basis).

Second, the court asserted that *Mount Airy* and *Nextel* involve different types of property and different taxes than real estate. Cmwlth. Op. at 23; 257 A.3d at 836. While true, nothing in *Mount Airy* or *Nextel* suggests that the constitutional

principles set forth there apply only to the type of property or specific tax involved in those cases. To the contrary, the Court has applied the same uniformity principle precluding differential treatment on the basis of the amount or value of property subject to tax across a broad spectrum of taxes, including estate taxes, personal and corporate income taxes, occupational privilege taxes, and gaming revenue taxes. There is no reason real estate taxes somehow should be an exception to that rule.

Third, the Commonwealth Court asserts that the sale price or market value of a property is "not the sole basis" used to select a property for appeal because the School District multiplies the sale price by the CLR and compares that value to the existing assessment. Cmwlth. Op. at 23; 257 A.3d at 836. While again factually correct, the court offers no explanation why this matters to the legal principle. The fact remains, the School District's policy treats taxpayers differently based on the value of their property, choosing to cause a different standard of valuation to be applied to certain taxpayers if the value of their property and the potential additional tax it can generate reach an amount the School District deems worth its while to seek.

The Commonwealth Court in *Kennett* concluded that the school district there chose to appeal only certain assessments based on the value of the property "for the purpose of making prudent fiscal decisions." 228 A.3d at 41. The trial court here drew a similar conclusion. Tr. Ct. Op. at 14. But this Court has held repeatedly that

a taxing authority cannot choose to treat a sub-class of taxpayers differently because the taxpayers' property is worth an amount that the authority deems adequate to be worth taxing and that the taxing authority's motive in treating a sub-class of taxpayers differently is not relevant to the uniformity analysis. *Kelley*, 181 A. at 602; *Saulsbury*, 196 A.2d at 666.

Moreover, as the Court has explained, "[w]here there is a conflict between maximizing revenue and ensuring that the taxing system is implemented in a non-discriminatory way, the Uniformity Clause requires that the latter goal be given primacy." *Valley Forge Towers*, 163 A.3d at 980. Similarly, in *Mount Airy*, the Court rejected the Department of Revenue's argument that the statute was constitutional because it represented a significant source of new revenue as "beside the point . . . [because] the same could be said for virtually every tax that the General Assembly imposes." 154 A.3d at 278. The Court stated that if it were to "hold that the legislature's mere desire to increase tax revenue empowers it to impose non-uniform taxes, [it] would nullify the Uniformity Clause." *Id.* Thus, that the School District's appeal policy might maximize its revenue collection does not excuse its violation of the Uniformity Clause.

Based on this Court's repeated decisions, the School District's appeal policy, by treating Taxpayers differently than others in the county based on the value of their property subject to tax, should be held unconstitutional as a matter of law, the

appeals should be dismissed, and the prior assessments should be reinstated.

CONCLUSION

For the foregoing reasons, appellants GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC respectfully request that the Court reverse the decision of the Commonwealth Court and order the 2019 Assessments set by Berks County for the Property reinstated.

Respectfully submitted,

Dated: March 14, 2022

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

I hereby certify that the foregoing Brief contains 7728 words and does not exceed the word limit pursuant to Pa. R.A.P. 2135(a)(1).

/s/ Glenn A. Weiner
Glenn A. Weiner

CERTIFICATION OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Glenn A. Weiner
Glenn A. Weiner

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GM BERKSHIRE HILLS LLC AND GM OBERLIN BERKSHIRE HILLS LLC,	:	No. 452 MAL 2021
Petitioners	:	Petition for Allowance of Appeal from the Order of the Commonwealth Court
v.	:	
BERKS COUNTY BOARD OF ASSESSMENT AND WILSON SCHOOL DISTRICT,	:	
Respondents	:	

ORDER

PER CURIAM

AND NOW, this 1st day of February, 2022, the Petition for Allowance of Appeal is **GRANTED**, **LIMITED TO** the issues set forth below. Allocatur is **DENIED** as to all remaining issues. The issues, as stated by petitioner, are:

a. Do a school district's selective real estate tax assessment appeals violate the Uniformity Clause of the Pennsylvania Constitution when the school district chooses only recently-sold properties for appeal, leaving most properties in the district at outdated base-year values?

b. Do a school district's selective real estate tax assessment appeals violate the Uniformity Clause of the Pennsylvania Constitution when the school district chooses only certain recently-sold properties that would generate a minimum amount of additional tax revenue for appeal, leaving most properties in the district at outdated base-year values?

Justice Brobson did not participate in the consideration or decision of this matter.

APPENDIX B

GM BERKSHIRE HILLS LLC and GM OBERLIN BERKSHIRE HILLS LLC,	:	IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
Appellants	:	CIVIL ACTION - LAW
Vs.	:	
	:	NO. 18-18627
BERKS COUNTY BOARD OF ASSESSMENT APPEALS,	:	
Appellee	:	
	:	REAL ESTATE TAX
and	:	ASSESSMENT APPEAL
WILSON SCHOOL DISTRICT,	:	
Intervenor	:	

Lawrence J. Arem, Esquire, attorney for Appellants, GM Berkshire Hills, LLC and GM Oberlin Berkshire Hills, LLC

Edwin L. Stock, Esquire, attorney for Appellee, Berks County Board of Assessment Appeals

Alicia S. Luke, Esquire, attorney for Intervenor, Wilson School District

DECISION AND ORDER, Scott E. Lash, J. January 14, 2020

The matter before this Court is the objection of GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC (hereinafter "Taxpayers") to the tax assessment appeal filed by the Wilson School District (hereinafter "District"). Taxpayers complain that the School District's appeal violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Uniformity Clause of the Pennsylvania Constitution, and the Pennsylvania General County Assessment Law.

Taxpayers' objections center on the school district's method in selecting which properties' assessments are appealed. The method

authorizes filing appeals only on those properties which were recently sold and, based upon the sale price, are potentially underassessed by a minimum of $150,000.00, calculated by applying the common level ratio to the recent sale price, and comparing the resulting figure to the current assessed value. Taxpayers argue that this method constitutes a spot assessment in violation of the Equal Protection clause. Taxpayers also object that District's method creates a separate, sub-classification of properties, namely recently sold properties, which are treated in a disparate manner from properties not sold, in violation of the Uniformity Clause. Finally, Taxpayers urge that the School District has no authority under the General County Assessment Law to appeal a property solely on the basis of the property being recently sold.

The parties stipulated to Findings of Fact, which are incorporated by this Court and are as follows:

I. FINDINGS OF FACT

1. The Appellants are GM Berkshire Hills, LLC and GM Oberlin Berkshire Hills, LLC (hereinafter "Taxpayers"), with a registered address of 418 Clifton Avenue, Suite 205, Lakewood, New Jersey 08701-3749.

2. The Appellee is the Berks County Board of Assessment Appeals, (hereinafter "Board"), with an office in the Berks County Services Center, 633 Court Street, Third Floor, Reading, Berks County, Pennsylvania 19601.

3. The Intervenor is the Wilson School District (hereinafter "District"), with an address located at 2601 Grandview Blvd., West Lawn, Berks County, Pennsylvania, 19609.

4. The properties that are the subject of the appeal are located at 2902 Wyoming Drive, Spring Township, Berks County, Pennsylvania (hereinafter "Parcel A") and 2800 Wilson School Lane, Spring Township, Berks County, Pennsylvania (hereinafter "Parcel B") (together, Parcel A and Parcel B are collectively referred to as the "Properties").[1]

5. The Properties are located within the geographic bounds of the District.

6. The Properties consist of 47 total buildings, which contain 408 residential rental units.

7. Taxpayers are the record owners of the Properties.

8. Taxpayers purchased the Properties in November of 2017 for a combined sale of $54,250,000.

9. As of July of 2018, the Berks County Assessment Office (hereinafter "Assessment Office") records provided that Parcel A had an assessed value of $5,177,000.00, and parcel B had an assessed value of $5,721,700.00.

10. In August of 2018, the District filed timely appeals of the Properties' assessments, contending that both Properties were underassessed.

[1] Despite the fact that two separate parcels are involved, Taxpayers filed only one appeal to the Court of Common Pleas for both Properties.

11. The District initiated the assessment appeals of the Properties consistent with its resolution, passed on June 18, 2018 ("Resolution").

12. The Resolution sets forth criteria to determine what properties to appeal, i.e., those that are "potentially underassessed by a minimum of $150,000, calculated by applying the common level ratio to the recent sales price, and comparing the resulting figure to the current assessed value."

13. The Resolution does not delineate any particular type or subtype of property for which the District would initiate assessment appeals or refrain from initiating such appeals.

14. Additionally, in practice, the District has not considered the property type or subtype to determine which assessment appeals to initiate; instead, the District follows the monetary criteria set forth in the Resolution.

15. In fact, the appeals the District initiated in 2017 (for the 2018 tax year) and 2018 (for the 2019 tax year) included properties classified as industrial, farm, commercial, residential, and apartment complexes.

16. Here, the Properties had a collective assessment of $10,488,700, implying a fair market value of $15,253,577 based on the 2019 common Level Ratio of 68.5%, but were purchased for $54,250,000. Therefore, the Properties fell well within the parameters of the Resolution as meeting the District's threshold to initiate assessment appeals.

17. The Assessment Office scheduled a hearing before the Board, which occurred on September 13, 2018.

18. Following the hearing, by notice dated October 17, 2018, the Board issued decisions increasing the assessed value for Parcel A to $17,651,600.00, and the assessed value for Parcel B to $19,509,700.00.

19. On November 13, 2018, Taxpayers filed a Petition for Appeal of the Board's decision to the Court of Common Pleas of Berks County.

II. DISCUSSION

Taxpayers' third objection, that the District's appeal is not permitted by the General County Assessment Law is a misstatement of the law. Taxpayers urge that, absent a county-wide reassessment, assessment of properties are generally not permitted. The exception to this appears in Section 8817 of the General County Assessment Law[2], which sets forth:

> (a) General Rule.--In addition to other authorization provided in this chapter, the assessors may change the assessed valuation on real property when a parcel of land is subdivided into smaller parcels or when improvements are made to real property or existing improvements are removed from real property or are destroyed. The recording of a subdivision plan shall not constitute grounds for assessment increases until lots are sold or improvements are installed. The painting of a building or the normal regular repairs to a building aggregating $2,500 or less in value annually shall not be deemed cause for a change in valuation
> (b) Construction.–A change in the assessed valuation on real property authorized by this section shall not be construed as a spot reassessment under section 8843 (relating to spot reassessment).

Taxpayers' reliance on section 8817 is misplaced. While it is true an Assessor cannot reassess real property except on a

[2] 53 Pa.C.S.A. §8817

countywide reassessment or under the circumstances set forth in Section 8817, these conditions do not apply here because school districts are not assessors, having no power to assess.

School districts have a statutory right to appeal assessments under section 8855 of the Consolidated County Assessment Law which states:

> A taxing district shall have the right to appeal any assessment within its jurisdiction in the same manner, subject to the same procedure and with like effect as if the appeal were taken by a taxable person with respect to the assessment, and, in addition, may take an appeal from any decision of the board or court of common pleas as though it had been a party to the proceedings before the board or court even though it was not a party in fact. A taxing district authority may intervene in any appeal by a taxable person under section 8854 (relating to appeals to court) as a matter of right.

53 Pa.C.S.A.§8855

As is clear from the statute, a school district has the same right to challenge a perceived underassessment as any taxpayer within the district has the right to challenge a perceived over-assessment. Neither a county reassessment nor a triggering event under §8817 such as improvements to the property, is a condition required for appeal. This distinction, between a review of an assessment by a school district versus one by an assessor, is "significant", as noted by the Commonwealth Court in Vees v. Carbon County Board of Assessment Appeals, 867 A.2d 742 (Pa Cmwlth. 2005). There the Court, in rejecting the taxpayer's argument that one of the aforesaid triggering events needed to be present to sustain an appeal by a school district, stated that the school district appeal is simply a revaluation which "was not initiated by a body possessing the power to prepare or revise assessment rolls, value

property, change the value of property, or establish the predetermined ratio, all essential elements of the assessment process". Id. at 746 (footnote and citation omitted). Taxpayers third objection is overruled.

Taxpayers' first objection, that the appeal violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution is likewise without merit, for similar reasons. Here, Taxpayers rely on the United States Supreme Court case of Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia, 488 U.S. 336 (1989). Similar to the Vees case, in Allegheny there were selective assessment increases based on recent sales. The difference, however, was that it was a County Assessor targeting the recently sold properties for reassessment. The U.S. Supreme Court found, among other things, that the County Assessor applied the tax laws of West Virginia in a manner which created disparity in assessed value between the property owned by Petitioners and similarly situated properties, in essence, a spot assessment, in violation of the Equal Protection Clause which "'protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class'" Id. at 345 (citation omitted).

The holding in Allegheny Pittsburgh Coal Company is not applicable in this case, because a school district cannot spot reassess, because it is not an assessor.

The Vees opinion is again instructive. There the Court states that "as a general proposition selective reassessment or 'spot reassessment' by a body clothed with the power to prepare or revise

assessment rolls, value property, change the value of property, or establish the predetermined ratio is improper", when dealing with "activity initiated by an entity enjoying the power of assessment" Vees, 867 A.2d at 747. However, the Court found, citing Millcreek Township School District v. Erie County Board of Assessment Appeals, 737 A2d 335 (Pa. Cmwlth. 1999), that because a School District lacks the power to assess, "the prohibition against spot reassessment does not apply to appealing school districts" Id. at 748.

In sum, the District has the statutory right to file an appeal challenging the assessment value of Taxpayers property or any other property within the district's boundaries. Such an appeal is not an action by the state or a spot assessment, because, simply put, the District does not have the authority to assess. Taxpayers' first objection is overruled.

While school districts are not assessors, they are taxing authorities and are subject to Constitutional parameters. One such parameter is the Uniformity Clause of the Pennsylvania Constitution, which Taxpayers argue has been violated by the District.[3]

Article VIII, §1 of the Pennsylvania Constitution (hereinafter "Uniformity Clause") provides that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of

[3] "[P]olitical sub-divisions are subject to uniformity requirements when they exercise their taxing powers" Alco Parking Corp. v. City of Pittsburgh, 307 A.2d 851, 856 (Pa. 1973)

the authority levying the tax and shall be levied and collected under general laws[4]".

In the case of Valley Forge Towers Apartments N. LP. v. Upper Merion Area School District, 163 A.3d 962 (Pa. 2017), the Pennsylvania Supreme Court considered the question of whether a school district violated the Uniformity Clause by selectively appealing only assessments of commercial properties, to the exclusion of other types of properties such as single-family residential homes. In its opinion, the Supreme Court addresses a tension that exists between observing full compliance with the Uniformity Clause against the rights of the school district to appeal assessments. The Court discusses two previous Pennsylvania Supreme Court cases also speaking on property tax assessments and the Uniformity Clause: Downingtown Area School District v. Chester County Board of Assessment Appeals, 590 Pa. 459, 913, A.2d 194 (2006), and Clifton v. Allegheny County, 600 Pa. 662, 969 A.2d 1197 (2009), providing an in para materia clarification of those holdings with that of Valley Forge on this difficult issue.

The Court makes the following fundamental statement:

> The Downingtown Court recited the foundational and longstanding principle that "a taxpayer is entitled to relief under the Uniformity Clause where his property is assessed at a higher percentage of fair market value than other properties throughout the taxing district." Downingtown, 590 Pa. at 466, 913 A.2d at 199 (citing In re Harleigh Realty Co., 299 Pa. 385, 388, 149 A. 653, 654 (1930)); see Appeal of F.W. Woolworth Co., 426 Pa. 583, 587, 235 A.2d 793,795 (1967)(recognizing that "uniformity has at its heart the equalization of the ratio among all properties in the district"), quoted in Downingtown, 590 Pa. at 468, 913 A.2d at 200. The Court explained, further, that "[t]his precept is based upon the general

[4] Pa. Constitution Article VIII section 1.

principle that taxpayers should pay no more or less than their proportionate share of government." Downingtown, 590 Pa. at 466, 913 A.2d at 199 (citing Deitch Co. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cnty., 417 Pa. 213, 220, 209 A.2d 397, 401 (1965)). The Court continued:

> While every tax is a burden, it is more cheerfully borne when the citizen feels that he is only required to bear his proportionate share of that burden measured by the value of his property to that of his neighbor. This is not an idle thought in the mind of the taxpayer, nor is it a mere speculative theory advocated by learned writers on the subject; but it is a fundamental principle written into the Constitutions and statues of almost every state in this country.

Id. at 466, 913 A.2d at 199 (quoting Del. L.& W.R. Co.'s Tax Assessment, 224 Pa. 240, 243, 73 A. 429, 430 (1909)).

Valley Forge Apartments, 163 A.3d at 972-73.

An appeal of an assessment, whether by taxpayer or school district, by its very nature creates the potential for disparate treatment between the property subject to the appeal and other similar properties within the same taxing district. The obvious purpose of the appeal is to obtain a fair assessment for that particular property. While that particular goal may be achieved, it is achieved in isolation from similar properties which are not subject to an assessment review. Thus, the school district may properly determine that a particular property is underassessed and file an appeal to reconcile that assessment, while other assessments not appealed and similar to the subject property, remain underassessed.

The disparity potential is created by an inherent flaw in the Pennsylvania statutory scheme. Under the scheme, counties initially establish assessment values through a countywide reassessment in

which a fair market value of all properties is determined and an established predetermined ratio (EPR) is then applied to the year of the countywide reassessment or base year for every property. In Berks County the last reassessment became effective in 1994 at which time a base year EPR of 100% of actual value was established.

Over time, due to economic factors such as increase in real estate values and inflation, the fair market values of properties change, rendering the existing assessments inaccurate. To counteract this reality, the state established the State Tax Equalization Board, (STEB) which functions to determine an accurate market value of taxable real property and to establish a "common level ratio" (CLR) of assessed value to current market value. The CLR, which in the base year is 1.0 or 100%, fluctuates based upon the market conditions. The goal is to equalize the assessment value for properties in years subsequent to the base year by applying the common level ratio to current fair market value.

The CLR, however, is only applied to properties whose assessments are being reviewed, such as through an appeal. Thus, while the appeal will result in the value of the property being adjusted by the CLR to reflect base year value, other properties of equal value, but not subject to an appeal, do not experience such an adjustment. As a result, two equivalent properties, side by side, within the same taxing district, can have two different assessments solely because one property's assessment was appealed and the other's was not.

Given the fact that a school district has a statutory right to appeal, and considering that the appeal would potentially equalize

the property's assessment with base year values but also potentially create disparity in relation to other properties, the operative question becomes: Under what circumstances can an appeal be sustained without violating the Uniformity Clause?

As stated in Valley Forge, the Supreme Court considered this issue in the context of a school district filing appeals solely on commercial properties within the district to the exclusion of other property types such as single family residential. The Court stated that this method resulted in a sub-classification drawn according to property type based on use and was a violation of the Uniformity Clause. The Court makes the following statement:

> [W]e find it useful to summarize two principles articulated in Downingtown and Clifton which are presently relevant. First, all property in a taxing district is a single class, and, as a consequence, the Uniformity Clause does not permit the government, including taxing authorities, to treat different property sub-classifications in a disparate manner. See Clifton, 600 Pa. at 686-87, 969 A.2d at 1212; accord Westinghouse [] [Electric Corp. v. Board of Assessment Appeals of Allegheny County] 539 Pa. [453,] [] 469, 652 A.2d [1306,] [] 1314 [(1995)]. Second, this prohibition applies to any intentional or systematic enforcement of the tax laws, and is not limited solely to wrongful conduct. See Downingtown, 590 Pa. at 470 n.10, 913 A.2d at 201 n.10 (citing Beattie [v. Allegheny County], 589 Pa. [132,] [] 119-20, 907 A.2d [519,] [] 523 [(2006)]).

Id. at 975

Thus, under Valley Forge, for the conduct to violate the Uniformity Clause, it must be "intentional" or "systematic" conduct, that is a purposeful choosing of certain properties for appeal while rejecting others, in essence creating a sub-classification of properties. These predicates imply there are situations when fact-specific circumstances will permit a selective appellate process by a school district.

We note that, in a general sense, the only true way to avoid some method of selection is to appeal all the assessments in the district. The Valley Forge Court spoke on this, rejecting countywide reassessment as the only alternative, stating "there are other, nondiscriminatory methods of deciding which properties to appeal" Id. at 977. The Court goes on to state that while the goal of full compliance with the Uniformity Clause shall be given primacy, that goal does not necessarily conflict with the school district's goal of maximizing revenue. Id. at 980.

Taxpayers urge that the School District created a sub-classification in violation of the Uniformity Clause by limiting its appeals to recently sold properties. While it is true that the School District appealed only those properties which were recently sold, based upon information received from STEB and also limited the appeals to those sales which also met a monetary threshold established by the School District[5], the decision to choose recently sold sales was not done purposefully. The sales properties were chosen because these were the only properties that the School District had sufficient information to form an opinion regarding which properties in the district were underassessed. The list of sales obtained from STEB arguably represented properties for the most part sold in an arm's length transaction, with the sales price, therefore, bearing a reasonable facsimile to fair market value. In comparing the sales price and the circumstances of the sale to the current assessment, the School District could make a

[5] The monetary threshold was established to identify those properties that would likely result in increased tax revenue for the School District, after deduction of the cost of the appeal.

fairly confident determination whether the property was underassessed. In contrast, the School District is without data on fair market value for unsold properties. Obtaining sufficient data for an appraisal on an unsold property would be difficult, for the School District would not have access to the property to determine the condition of the property or its utility, necessary for a sales or cost approach, or income and expense data, necessary for an income approach. Further, the cost and time consumption necessary in developing the appraisals on the properties in the district would be prohibitive. In essence, the School District filed appeals on those properties where they were readily able to ascertain the likelihood that properties were underassessed. It did not deliberately choose to appeal one property and reject another. It goes without saying that if the School District had sufficient information on any non-sold properties to establish a likely underassessment, it would have appealed those properties as well.

Finally, we comment on the monetary threshold established by the School District. Establishing a monetary threshold such that the property sold had to be "potentially underassessed by a minimum of $150,000.00, calculated by applying the common level ratio to the recent sale price, and comparing the resulting figure to the current assessed value", is a deliberate action by the School District and does create a sub-classification. The purpose of the threshold was to determine which properties, after estimating the cost of an appeal, would bring in sufficient tax revenue to make an appeal economic sensible. The Valley Forge Court, citing a hypothetical example which is factually consistent with this case,

found that the monetary threshold sub-classification should not be construed as violating the Uniformity Clause. The Court pronounces:

> We pause at this juncture to clarify that nothing in this opinion should be construed as suggesting that the use of a monetary threshold–such as the one challenged in [In re:] Springfield [School District, 101 A.3d 835 (Pa. Cmwlth. 2014)]–or some other selection criteria would violate uniformity if it were implemented without regard to the type of property in question or the residency status of its owner.[19] Such methodologies are not presently before the Court.
>
> [19] In Springfield the school district only appealed properties for which a recent sales price was at least $500,000 greater than its implied market value, defined as the assessed value divided by the CLR. Thus, with a CLR of, say , 83%, a parcel assessed at $1,000,000 would have an implied market value of $1, 204,819 ($1,000,000 divided by 0.83). The school district would appeal the $1,000,000 assessment if the property had recently sold for at least $1,704,819—the implied market value plus $500,000.

This Court finds that the method of the School District in appealing only properties which were sold did not intentionally create a sub-classification and was not a violation of the Uniformity Clause. This Court also finds that the monetary threshold established by the School District in limiting the appeal of sales to the properties which met these thresholds was a method acceptable to the Pennsylvania Supreme Court in Valley Forge.

This Court enters the following Order:

GM BERKSHIRE HILLS LLC and GM OBERLIN BERKSHIRE HILLS LLC,	:	IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
Appellants	:	CIVIL ACTION - LAW
Vs.	:	NO. 18-18627
BERKS COUNTY BOARD OF ASSESSMENT APPEALS,	:	
Appellee	:	
and	:	REAL ESTATE TAX ASSESSMENT APPEAL
WILSON SCHOOL DISTRICT,	:	
Intervenor	:	

ORDER

AND NOW, this 14th day of January 2020, after consideration of the evidence offered during the October 24, 2019 non-jury trial of this matter on the issue of the constitutionality of Wilson School District's assessment appeals, and the submissions by the parties, it is hereby ORDERED as follows:

1. The Wilson School District has the statutory right to initiate tax assessment appeals for properties located within the Wilson School District that are believed to be underassessed.
2. The Wilson School District's practices and procedures with regard to initiating tax assessment appeals, as evidenced during trial, are constitutionally and statutorily proper;
3. The Wilson School District properly exercised its statutory right to initiate assessment appeals of the above-captioned

4. tax parcels, and did so in a manner that did not constitute an impermissible "spot assessment" or violate any uniformity requirement of the constitution; and
5. This matter shall expeditiously proceed to the issue of the valuation of the above-captioned tax parcels.
6. The Appellants' objections are OVERRULED.

BY THE COURT:

Scott E. Lash, J.

APPENDIX C

GM BERKSHIRE HILLS LLC and, GM OBERLIN BERKSHIRE HILLS LLC, Appellant VS. BERKS COUNTY BOARD OF ASSESSMENT APPEALS, Appellee WILSON SCHOOL DISTRICT, Intervenor	: IN THE COURT OF COMMON PLEAS : OF BERKS COUNTY, PENNSYLVANIA : CIVIL ACTION – LAW : : REAL ESTATE TAX : ASSESSMENT APPEAL : : No. 18-18627 : : ASSIGNED TO: : Scott E. Lash, J.

ORDER

AND NOW, this 18th day of August, 2020, in accordance with the attached Stipulation agreed to among Edwin L. Stock, Esquire, Solicitor for the Appellee, Alicia S. Luke, Esquire, Counsel for Intervenor; and Matthew J. McHugh, Esquire, Counsel for the Appellant, it is hereby ORDERED and DECREED as follows:

1. The real property which is the subject matter of the above captioned assessment appeal, being located in Spring Township, Berks County, Pennsylvania shall be assessed as follows:

PARCEL NUMBER	LOCATION	ASSESSMENT	TAX PERIOD
80-4386-18-41-7964	2902 Wyoming Drive	13,612,300	1/1/19 co/twp & 7/1/19 sch
80-4386-18-41-7964	2902 Wyoming Drive	12,360,400	1/1/20 co/twp & 7/1/20 sch
80-4386-18-42-9417	2800 Wilson School Lane	14,746,700	1/1/19 co/twp & 7/1/19 sch
80-4386-18-42-9417	2800 Wilson School Lane	13,390,400	1/1/20 co/twp & 7/1/20 sch

2. The above assessments shall remain in effect unless and until subsequently changed as provided by law subject to Appellant's right to appeal as set forth in the Consolidated County Assessment Law.

3. This Order shall constitute a final Order. Nothing in this Order shall impair the right of GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC to appeal the prior decision of this Court regarding the methodology utilized by Wilson School District in selecting properties the assessments of which Wilson School District appealed to the Board of Assessment Appeals.

4. Each party shall bear its own costs as incurred.

BY THE COURT:

Scott E. Lash, J.

NOTICE IS HEREBY GIVEN OF THE ENTRY OF THIS ORDER OR DECREE PURSUANT TO RULE P.C.P. 236 YOU ARE NOTIFIED THAT THIS ORDER/DOCUMENT HAS BEEN FILED IN THE PROTHONOTARY'S OFFICE OF BERKS COUNTY AND THIS IS AN EXTRACT FROM THE RECORD OF SAID COURT CERTIFIED ON 08/18/20
J. K. DEL COLLO Prothonotary
Sarah Bruynooghe Deputy

COURT OF COMMON PLEAS BERKS COUNTY, PA

GM BERKSHIRE HILLS LLC and, GM OBERLIN BERKSHIRE HILLS LLC, Appellant VS. BERKS COUNTY BOARD OF ASSESSMENT APPEALS, Appellee WILSON SCHOOL DISTRICT, Intervenor	:	IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA CIVIL ACTION – LAW REAL ESTATE TAX ASSESSMENT APPEAL No. 18-18627 ASSIGNED TO: Scott E. Lash, J.

STIPULATION

AND NOW, this _____ day of _____, 2020, it is hereby stipulated and agreed to among Edwin L. Stock, Esquire, Solicitor for the Appellee; Alicia S. Luke, Esquire, Counsel for Intervenor; Matthew J. McHugh, Esquire, Counsel for the Appellant, as follows:

1. The real property which is the subject matter of the above captioned assessment appeal, being located in Spring Township, Berks County, Pennsylvania shall be assessed as follows:

PARCEL NUMBER	LOCATION	ASSESSMENT	TAX PERIOD
80-4386-18-41-7964	2902 Wyoming Drive	13,612,300	1/1/19 co/twp & 7/1/19 sch
80-4386-18-41-7964	2902 Wyoming Drive	12,360,400	1/1/20 co/twp & 7/1/20 sch
80-4386-18-42-9417	2800 Wilson School Lane	14,746,700	1/1/19 co/twp & 7/1/19 sch
80-4386-18-42-9417	2800 Wilson School Lane	13,390,400	1/1/20 co/twp & 7/1/20 sch

2. The above assessments shall remain in effect unless and until subsequently changed as provided by law subject to Appellant's right to appeal as set forth in the Consolidated County Assessment Law.

3. Nothing in the Stipulation shall impair the right of GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC to appeal the prior decision of this Court regarding the methodology utilized by Wilson School District in selecting properties the assessments of which Wilson School District appealed to the Board of Assessment Appeals.

4. Each party shall bear its own costs as incurred.

MATTHEW J MCHUGH, ESQUIRE
Counsel for the Appellant

ALICIA S. LUKE, ESQUIRE
Counsel for the Intervenor

EDWIN L. STOCK, ESQUIRE
Solicitor for the Appellee

APPENDIX D

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC, Appellants	:	
v.	:	
Berks County Board of Assessment and Wilson School District	:	No. 930 C.D. 2020
	:	Argued: June 10, 2021

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION
BY JUDGE FIZZANO CANNON FILED: July 8, 2021

GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC (together, Berkshire), the owners of two properties (Properties) in Berks County, appeal from the August 18, 2020, final order of the Court of Common Pleas of Berks County (trial court) regarding the Wilson School District's (District's) tax assessment appeal of the Properties.[1] Upon review, we affirm.

[1] The trial court had previously bifurcated the methodology and valuation questions in the case. The trial court's January 14, 2020, decision and order addressed the methodology questions and is the substantive basis of Berkshire's appeal to this Court. The trial court's August 18, 2020, final order indicated the parties had stipulated to resolve the valuation questions and expressly acknowledged Berkshire's intent to appeal on the methodology questions. *See* Appendix A & B to Berkshire's Brief (Br.).

I. Factual & Procedural Background

The underlying facts of this appeal as stated by the trial court and reflected in the record are not in dispute.[2] The Properties are located in Spring Township at 2902 Wyoming Drive and 2800 Wilson School Lane, within the District's geographical boundaries. Trial Ct. Op. at 3 (Appendix A to Berkshire's Br.). The Properties are the sites of 47 residential buildings, including 408 rental units. *Id.* Berkshire is the current record owner, having purchased the Properties in November 2017 for a combined sales price of $54,250,000. *Id.* At that time, the County recorded an assessed value for the Properties at a combined total of $10,448,700, based on the last countywide assessment in 1994. *Id.* at 3 & 11.

In June 2018, the District's school board passed a resolution (Resolution) authorizing its business office to initiate and litigate appeals of property assessments within the District.[3] Trial Ct. Op. at 4. The Resolution directed the business office to use monthly reports generated by the State Tax Equalization Board (STEB) as a basis to select properties for appeal. *Id.* These reports list recent property sales in each county along with the sales prices and current assessed values. Reproduced Record (R.R.) at 10a-11a & 37a-54a. The Resolution instructed the business office to begin with recently sold properties within the District and their current assessments from the STEB reports, apply the County's applicable common level ratio[4] (CLR) of 68.5% to each recent sales price, compare the resulting figure

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[2] The trial court stated in its decision that the parties stipulated to the Findings of Fact. Trial Ct. Op. at 2.

[3] Christine Schlosman (Schlosman), the District's chief financial officer, testified that these resolutions are enacted annually by the District. Reproduced Record (R.R.) at 9a.

[4] Section 102 of the General County Assessment Law, Act of May 22, 1933, P.L. 853, *as amended*, added by the Act of December 28, 1955, P.L. 917 (Assessment Law), defines the

to the property's current assessed value, and pursue an appeal if the difference between the two figures exceeded $150,000 for a given property. Trial Ct. Op. at 4; R.R. at 10a & 37a-38a. The $150,000 figure represents a cost-benefit threshold at which the revenue from a successful appeal would justify the cost of the legal and appraisal fees necessary for the District to undertake the appeal. R.R. at 33a. The Resolution does not instruct the business office to consider the type or nature of a property (commercial, residential, agricultural, or industrial, etc.) when determining whether the property may be underassessed and subject to an appeal. Trial Ct. Op. at 4; R.R. at 10a, 13a, 15a & 37a-38a. Appeals initiated by the District using this method during the relevant time period included properties classified as "industrial, farm, commercial, residential, and apartment complexes."[5] Trial Ct. Op. at 4.

Using the method outlined in the Resolution, the District calculated that the Properties' combined November 2017 sales price of $54,250,000, when multiplied by the applicable 68.5% CLR, resulted in a current combined assessment value of $37,161,300. R.R. at 4a. This exceeded the prior combined assessment value of $10,448,700 by far more than $150,000; in fact, the Properties were underassessed, according to this calculation, by over $26 million. *Id.* The District therefore appealed the Properties' assessments for the 2018 and 2019 tax years to

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"common level ratio" (CLR) as "the ratio of assessed value to current market value used generally in the county as last determined by [the STEB] pursuant to the [A]ct of June 27, 1947 (P.L. 1046, No. 447), referred to as the State Tax Equalization Board Law." 72 P.S. § 5020-102. The CLR is calculated for each county on an annual basis by the STEB using data from all arms-length sales transactions during the relevant period, supplemented by independent appraisal data and other relevant information. *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1215-16 (Pa. 2009). For example, "a county's CLR will be 70 if the total assessed value of properties sold in arms-length sales in a year is 70% of the total market value of the properties" in the county. *Id.* at 1216.

[5] Apartment complexes like the ones at issue here are residential in nature, but for assessment purposes they have been characterized as commercial. *See Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 965 (Pa. 2017).

the County Board of Assessment (Board) in August 2018. Trial Ct. Op. at 4. The Board held a hearing in September 2018, then increased the assessed and taxable value of the Properties to a combined new total of $37,161,300 (68.5% of the November 2017 combined sales price of $54,250,000). *Id.* at 5. Berkshire appealed to the trial court, which conducted a hearing on October 24, 2019. *Id.*

Christine Schlosman (Schlosman) of the District's business office testified. She has been with the District since 2007, is currently its Chief Financial Officer, and oversees the business office. R.R. at 8a. Schlosman explained that based on the authority granted by the Resolution, the business office reviews the monthly STEB reports and appeals nearly all assessments of properties within the District where the calculations set forth in the Resolution are met. *Id.* at 13a.[6] The $150,000 figure used as the threshold for an appeal was derived by the business office in 2017 and reflects potential annual revenues to the District of about $3,900. *Id.* at 15a-16a.

Schlosman confirmed that the business office does not consider appeals of properties that do not appear on the monthly STEB reports. R.R. at 18a. The District does not routinely conduct fair market valuations of properties throughout its area, does not ask the Board to do so on its behalf, and does not authorize the business office to expend resources on such practices, because such efforts would require evaluation of properties that are not on the market or access to otherwise private financial records of property owners, such as profit and loss statements from commercial real estate entities. *Id.* at 22a-24a.

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[6] Schlosman explained that an exception might arise where a vacant lot is sold and will shortly be developed. R.R. at 13a. Because that property will be reassessed by the County once the development is complete, the business office would refrain from expending time and resources to appeal the potential underassessment. *Id.* at 13a-14a.

John Miravich (Miravich) also testified before the trial court. He is retained by the District to serve as its solicitor and participates in assessment appeals on an hourly-billed basis. R.R. at 26a & 30a. He stated that the STEB reports are the starting point for such considerations and serve as a factual basis for the District to assert that a property is underassessed based on its recent sale, because the publicly recorded price, as listed on the reports, is a relatively accurate indicator of the property's actual market value. *Id.* at 27a & 31a-32a. Miravich stated that he does not believe he has the legal authority to ask the District to request that owners of unsold properties provide the District with information concerning their properties' values. *Id.* at 28a. He added that in Berks County, the assessment appeal procedure has no discovery process that would allow the District to obtain non-public financial or value information on properties within its area.

On January 14, 2020, the trial court issued its decision and order.[7] The trial court recognized that the District's actions are subject to constitutional parameters, including the Equal Protection Clause of the U.S. Constitution, U.S. Const. amend. XIV § 1, and the Uniformity Clause of the Pennsylvania Constitution, Pa. Const. art. VIII § 1. Trial Ct. Op. at 8. The trial court also recognized that the nature of the assessment appeal process, whether initiated by a taxpayer or a taxing authority, creates the potential for disparate taxation because only those properties selected for appeal will be reviewed and potentially reassessed, while others will remain under their prior assessment values, whether those values have since become underassessed or over-assessed due to changes in the local economy and real estate market. *Id.* at 10-11. The trial court noted that the County's CLR, which is devised annually by the STEB, aims to equalize assessment values over time, but it is only

[7] As indicated in note 1 above, the trial court had previously bifurcated the methodology aspects of the case from the valuation aspects; the valuation aspects are not at issue here.

implemented on the occasion of an appeal that necessarily singles out the property assessment that is being appealed. "As a result, two equivalent properties, side by side, within the same taxing district, can have two different assessments solely because one property's assessment was appealed and the other's was not." *Id.* at 11.

The trial court observed, however, that non-discriminatory methods of selecting properties to appeal are possible. Trial Ct. Op. at 12-13. The trial court found the District's method of selecting recently sold properties from the monthly STEB reports, using the CLR to calculate the differential between those properties' recent sales prices and the previous assessed value, and appealing assessments where the differential was at least $150,000, to be acceptable. *Id.* at 13-15. The trial court concluded that the District's method relied on publicly available information providing "a reasonable facsimile to fair market value," did not select properties based on their type or classification, and "did not deliberately choose to appeal one property and reject another" based on any unconstitutional premise. *Id.* at 13-15.

Berkshire thereafter appealed to this Court.

II. Parties' Arguments

Berkshire argues that the District's method of using recently sold properties for determining which property assessments to appeal violates the U.S. Constitution's Equal Protection Clause and the Pennsylvania Constitution's Uniformity Clause. Berkshire's Br. at 9-12 & Reply Br. at 4-8. Berkshire asserts that as a taxing authority, the District may not selectively seek reassessment of properties based on their recent sales prices while declining to appeal the assessments of unsold properties that may be similarly underassessed. *Id.* at 10-12 & 16 & Reply Br. at 4-8. Berkshire relies on *Allegheny Pittsburgh Coal Company v. County Commission of Webster County*, 488 U.S. 336 (1989), for the premise that

federal equal protection principles extend to state and local real estate taxation systems and protect taxpayers from differential treatment based on recent property sales prices. Berkshire contends that under the District's selection method, new owners will be unfairly taxed in comparison to owners of similar properties remaining un-assessed because those properties were not recently sold. *Id.* at 10-12 & 16 & Reply Br. at 4. In this context, Berkshire avers that the District's reliance on recent purchase prices may be convenient and even accurate, but is nevertheless arbitrary and improper. *Id.* at 13 & Reply Br. at 10-11.

Berkshire also argues that the District's method violates the Pennsylvania Constitution's Uniformity Clause for similar reasons. Berkshire's Br. at 12. Berkshire points out that equal protection jurisprudence under the U.S. Constitution provides the "constitutional floor for Pennsylvania's uniformity system"; therefore, a violation of equal protection principles necessarily also violates the Uniformity Clause. *Id.* at 13 & Reply Br. at 2 (citing *Downingtown Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 200 (Pa. 2006)).

Berkshire also challenges the District's use of a $150,000 threshold to determine which recently sold properties to appeal for reassessment. Berkshire's Br. at 18-25 & Reply Br. at 11-13. Berkshire acknowledges that this practice may be facially neutral and not dependent on classifications by property type, but suggests that it violates Pennsylvania's Uniformity Clause by resulting in disparate treatment of otherwise similarly situated properties and their owners, even if it may be a valid cost-benefit analysis by the District. *Id.* at 18-21 & Reply Br. at 11-13.

The District responds that Berkshire has failed to meet its heavy burden to establish that the District's method of determining which property assessments to appeal violates constitutional principles. District's Br. at 27. The District adds that

no relevant precedent prohibits a school district from using a property's recent sales price when selecting assessments to appeal, so long as the selection method does not differentiate based on property type or classification (residential, commercial, industrial, or agricultural, etc.). *Id.* at 23. The District defends the constitutionality of its selection method by pointing out that it uses publicly available information reflecting the current market value of properties within its boundaries (recent sales prices in the STEB reports) and criteria applicable to any property within its boundaries (the $150,000 threshold). *Id.* at 13-18. The District asserts that Berkshire's arguments, if successful, could restrict a taxing authority's statutory appeal rights to an extent that they would be effectively negated. *Id.* at 14.

III. Discussion[8]

The Consolidated County Assessment Law, 53 Pa.C.S. §§ 8801-8868, grants a school district "the right to appeal any assessment within its jurisdiction in the same manner, subject to the same procedure and with like effect as if the appeal were taken by a taxable person with respect to the assessment." 53 Pa.C.S. § 8855. Section 8855 does not restrict the methodology employed by a school district to determine whether to appeal. *Bethlehem Area Sch. Dist. v. Bd. of Revenue Appeals of Northampton Cnty.*, 225 A.3d 212, 219 (Pa. Cmwlth. 2020). Nonetheless, in selecting properties for assessment appeals, the school district must exercise its discretion within constitutional boundaries. *Id.*

The Equal Protection Clause of the U.S. Constitution provides that no state or governmental entity may "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1. The Pennsylvania

[8] This Court's review of a trial court decision in a property tax assessment appeal is limited to a determination of whether the trial court abused its discretion, committed an error of law, or made findings of fact not supported by substantial evidence. *Maula v. Northampton Cnty. Div. of Assessment*, 149 A.3d 442, 444 n.2 (Pa. Cmwlth. 2016).

Constitution's Uniformity Clause states: "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." Pa. Const. art. VIII § 1. The general constitutional principles governing the validity of tax classifications are well established, and we evaluate challenges based on the equal protection and uniformity standards in the same manner:

> Under the [E]qual [P]rotection [C]lause, and under the Uniformity Clause, absolute equality and perfect uniformity in taxation are not required. In cases where the validity of a classification for tax purposes is challenged, the test is whether the classification is based upon some legitimate distinction between the classes that provides a non-arbitrary and "reasonable and just" basis for the difference in treatment. Stated alternatively, the focus of judicial review is upon whether there can be discerned "some concrete justification" for treating the relevant group of taxpayers as members of distinguishable classes subject to different tax burdens. When there exists no legitimate distinction between the classes, and, thus, the tax scheme imposes substantially unequal tax burdens upon persons otherwise similarly situated, the tax is unconstitutional.

City of Harrisburg v. Sch. Dist. of City of Harrisburg, 710 A.2d 49, 53 (Pa. 1998) (citations omitted). With regard to property taxation, our Supreme Court has explained:

> First, all property in a taxing district is a single class, and, as a consequence, the Uniformity Clause does not permit the government, including taxing authorities, to treat different property sub-classifications in a disparate manner. Second, this prohibition applies to any intentional or systematic enforcement of the tax laws, and is not limited solely to wrongful conduct.

Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist., 163 A.3d 962, 974 (Pa. 2017) (citations omitted). Thus, a uniformity inquiry in the context of real property taxation incorporates the equal protection inquiry, but also requires more stringent review of a taxing authority's methods and actions. *Downingtown*, 913 A.2d at 201 n.9. These kinds of disputes are not analyzed under the traditional rational basis standard usually associated with equal protection jurisprudence: "[P]roperty taxes are 'different' because 'real property is the classification,' with the consequence . . . that all real estate in a taxing district is constitutionally entitled to uniform treatment." *Valley Forge Towers*, 163 A.3d at 977 (quoting *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1212 (Pa. 2009)).

"Where there is a conflict between maximizing revenue and ensuring that the taxing system is implemented in a non-discriminatory way, the Uniformity Clause requires that the latter goal be given primacy. Notably, however, the two objectives do not necessarily conflict." *Valley Forge Towers*, 163 A.3d at 980 (citing *Clifton*). Nevertheless, a taxpayer posing a constitutional challenge bears the burden to prove that the taxing authority engaged in constitutionally prohibited conduct, because it is well-settled law that the acts of a governmental entity are presumed constitutional. *Bethlehem*, 225 A.3d at 218.

In *In re Appeal of Springfield School District*, 101 A.3d 835 (Pa. Cmwlth. 2014), *overruled in part on other grounds by Valley Forge Towers*, 163 A.3d at 975 n.13, the taxpayer bought Delaware County properties in 2011 for a combined price of $11.4 million, at which time the properties were assessed at roughly $5 million (combined) based on the last countywide assessment in 1998. *Springfield*, 101 A.3d at 838. The school district appealed to the county assessment board seeking a reassessment based on the purchase price. *Id.* The board declined

to increase the assessment and the school district further appealed to the trial court. *Id.* at 839. At an evidentiary hearing before the trial court, the school district's executive director of operations testified that he selected property assessments to appeal where a property's recent sales price, which he obtained from monthly real estate transfer tax reports, exceeded the property's implied market value (based on the 1998 assessment and the annual county CLR) by at least $500,000; the difference resulted in $9,000-$11,000 in potential additional revenue, which justified the costs of incurring the appeal. *Id.* at 840.

The trial court in *Springfield* upheld the school district's method of selecting properties for assessment appeals and, after recalculating using a figure just under the recent purchase price and the applicable CLR, assigned the properties a new combined assessment of roughly $8 million. 101 A.3d at 841. This Court affirmed, finding no constitutional uniformity violation because the evidence did not establish wrongful conduct or deliberate and purposeful discrimination on the school district's part. *Id.* at 848-49. This Court also found no constitutional infirmity in the school district's $500,000 threshold, even though its application in practice resulted in only commercial properties' assessments being appealed because the assessments of most residential properties in the school district would not meet the threshold; at that time, this Court did not construe uniformity as requiring "equalization across all potential sub-classifications of real property (for example, residential versus commercial)." *Id.* (quoting *Downingtown*).

The Supreme Court denied the *Springfield* taxpayer's petition for allowance of appeal. *In re Appeal Springfield Sch. Dist.*, 121 A.3d 497 (Pa. 2015). However, our Supreme Court subsequently scrutinized *Springfield* in deciding *Valley Forge Towers*. In *Valley Forge Towers*, the school district did not consider

recent sales within its boundaries, but retained an outside consultant to conduct a review and report on properties to be targeted for appeal. 163 A.3d at 966. Based on the consultant's recommendation, the school district consciously limited its appeals to commercial properties, including apartment complexes, because those properties tended to have higher values than single-family homes, and their reassessments would generate greater revenue increases. *Id.*

In *Valley Forge Towers*, the trial court approved the school district's selection method and this Court affirmed. However, our Supreme Court reversed, finding the school district's strategy violated constitutional principles because "a taxing authority is not permitted to implement a program of only appealing the assessments of one sub-classification of properties, where that sub-classification is drawn according to property type—that is, its use as commercial, apartment complex, single-family residential, industrial, or the like." 163 A.3d at 978. The Supreme Court also clarified that a challenge to a school district's assessment appeal process need not show that the school district engaged in outright wrongful or discriminatory conduct, because constitutional violations can still arise from an outwardly neutral yet "intentional or systematic method of enforcement of the tax laws." *Id.* at 975 (discussing and quoting *Downingtown*, 913 A.2d at 201 & n.10).

In that respect, the Supreme Court disapproved of this Court's approach in *Springfield*, which interpreted the relevant precedent to permit differentiation based on property type and to require a taxpayer to show wrongful conduct or an intent to discriminate on the part of the school district. *Valley Forge Towers*, 163 A.3d at 974-75 & n.13. However, the *Valley Forge Towers* Court stressed that it did *not* disapprove of this Court's holding that the *Springfield* school district's selection

of properties for assessment appeals based on recent sales prices and use of a monetary threshold did not violate constitutional principles:

> Our disapproval of *Springfield*'s interpretation of this Court's precedent should not be equated to disagreement with the result it reached. In *Springfield*, the property owners challenged a school district's policy of using . . . a monetary threshold to decide which properties to appeal. They did not allege a scheme involving disparate treatment of property sub-classifications drawn according to property type . . . .
>
> . . . .
>
> We pause at this juncture to clarify that nothing in this opinion should be construed as suggesting that the use of a monetary threshold—such as the one challenged in *Springfield*—or some other selection criteria would violate uniformity if it were implemented without regard to the type of property in question . . . . Such methodologies are not presently before the Court.

Valley Forge Towers, 163 A.3d at 975 n.13 & 979 (citation omitted).

Since *Valley Forge Towers*, this Court has held that a school district's use of recent sales prices and a cost-benefit formula to determine which property assessments to appeal will satisfy constitutional criteria so long as the strategy is implemented without regard for property type or classification.[9] In *Punxsutawney Area School District v. Broadwing Timber, LLC* (Pa. Cmwlth., No. 1209 C.D. 2018, filed Oct. 29, 2019), 2019 WL 5561413 (unreported), *appeal denied*, 234 A.3d 399

[9] We have also upheld school district assessment appeal practices where the school district did not use recent sales reports, but instead retained outside consultants to survey and select property assessments for appeal, so long as the overall method of selection did not violate the conclusions and holding of *Valley Forge Towers*. *See, e.g., E. Stroudsburg Area Sch. Dist. v. Meadow Lake Plaza, LLC* (Pa. Cmwlth., No. 371 C.D. 2018, filed Oct. 17, 2019), 2019 WL 5250831 (unreported). We cite unreported decisions of this Court as persuasive authority pursuant to our Internal Operating Procedures. *See* 210 Pa. Code § 69.414(a).

(Pa. 2020), the school district's business administrator flagged a real estate transfer tax payment of over $33,000 resulting from the sale of a previously tax-exempt property; after a review, the school district appealed the property's assessment. *Id.*, slip op. at 5, 2019 WL 5561413, at *2. The business administrator testified that to select properties for appeals, she reviewed monthly real estate transfer tax payments from recent property sales, and when she saw a transaction with a transfer tax above the average amount of about $1000, regardless of the property's type or classification, she flagged it for the school district to review. *Id.*, slip op. at 4-5, 2019 WL 5561413, at **2-3. The business administrator acknowledged that this approach so far had not resulted in a residential property assessment being appealed, but stated that the school district would pursue such an appeal "if a residential property transferred at a high enough sale to provide that type of realty transfer tax." *Id.*, slip op. at 7, 2019 WL 5561413, at *3.

The trial court in *Punxsutawney* upheld the school district's method and valuation of the property. *Punxsutawney*, slip op. at 8-10, 2019 WL 5561413, at *4. The trial court rejected the taxpayer's claim that the school district's method created an unconstitutional disparate impact on commercial properties, reasoning that the concept of disparate impact "has not been given broad application outside the civil rights context" and that *Valley Forge Towers* gave "no indication that it meant to expand [disparate impact's] scope to encompass tax assessment appeals." *Id.*, slip op. at 10, 2019 WL 5561413, at *5 (quoting trial court's opinion).

We affirmed the trial court's decision in *Punxsutawney*, holding that even though the school district's process was not based on a specific formula, it was "based on a financial analysis implemented without regard to a property's type or ownership and is of the type approved by *Valley Forge Towers*." *Punxsutawney*,

slip op. at 20, 2019 WL 5561413, at *8. Moreover, although the school district's process had not yet resulted in a residential property being selected for appeal, that possibility had not been foreclosed; therefore, the fact that only commercial properties had so far been selected for appeal did not create an as-applied unconstitutional classification based on disparate impact. *Id.*, slip op. at 21-22, 2019 WL 5561413, at *9.

In *Punxsutawney*, the taxpayer's application for a further appeal to the Supreme Court of Pennsylvania was denied. *See Punxsutawney Area Sch. Dist. v. Broadwing Timber, LLC*, 234 A.3d 399 (Pa. 2020). However, the Supreme Court accepted the taxpayer's appeal in *Kennett Consolidated School District v. Chester County Board of Assessment Appeals*, 228 A.3d 29 (Pa. Cmwlth.), *appeal granted*, 240 A.3d 611 (Pa. 2020). In *Kennett*, the school district did not use recent sales prices, instead retaining an outside consultant to review all assessments within the school district for appeal potential with specific instructions that the type or classification of property was not to be a factor in the analysis. *Id.* at 31. The consultant identified 13 properties that might be underassessed by at least $1 million based on the consultant's analysis of market values. Of those, the school district appealed 12, including commercial property owned by Autozone Development Corporation (Autozone). *Id.* at 32. The Board declined to reassess the property and the school district appealed to the trial court, at which point Autozone raised a constitutional challenge in the context of a motion to quash. *Id.*

The trial court denied Autozone's motion to quash, and we affirmed based on *Valley Forge Towers*, *Springfield*, and *Punxsutawney*. *Kennett*, 228 A.3d at 37-41. Because the evidence established that the school district used a purely monetary approach and had not intentionally selected property assessments to appeal

based on property type (commercial vis-à-vis residential), we held no constitutional violation occurred, reasoning that the school district's "disregard of property type cannot logically equate to unlawful treatment based upon property type." *Id.* at 39. We also rejected Autozone's as-applied or disparate impact claim: "The mere fact that all appealed properties were commercial does not *per se* create a violation of the Uniformity Clause." *Id.* The Supreme Court accepted the following questions for review:

> (1) Did the [s]chool [d]istrict violate the requirements of the Uniformity Clause by subdividing real estate in the [d]istrict based [upon] the money value [of] the property and imposing unequal tax burdens on properties with actual market value of more than $1,000,000?
>
> (2) Did the [s]chool [d]istrict violate the requirements of the Uniformity Clause by implementing an assessment appeal selection system which subjected only commercial properties to disparate treatment in operation and effect?
>
> (3) Did the Commonwealth Court err by shifting the burden of proof and holding taxpayers to an impossible standard that this Court has specifically rejected, namely by requiring taxpayers to prove that the [s]chool [d]istrict intended to discriminate against a sub-class of taxpayers?

Kennett Consol. Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals, 240 A.3d 611-12 (Pa. 2020).

The facts and issues here differ in some aspects from *Kennett* and render two of the three questions accepted for review there inapplicable to this case. The second question accepted for review by the Supreme Court in *Kennett* concerns the fact that facially neutral selection practices have tended to create a disparate impact on commercial properties. However, Berkshire's specific challenge here is

to the District's use of recently sold properties as a basis for the selection process: "the challenge is to the manner in which the [D]istrict selected assessments to appeal – considering only a subclass of properties that were under new ownership – which violates both the federal Equal Protection Clause and Pennsylvania's Uniformity Clause." Berkshire's Reply Br. at 6. For purposes of this appeal, then, our analysis is not necessarily impacted by the second question under consideration by the Supreme Court in *Kennett*.

The third question accepted by the Supreme Court in *Kennett* may be read as a request for clarification by the Supreme Court of the taxpayer's burden of proof with regard to a school district's intent in the context of constitutional challenges to assessment appeal practices. Here, the District acknowledges that it begins its process with recently sold properties based on information from the monthly STEB reports. There is no evidence of any outright intent on the District's part to discriminate by means of its method, but the Supreme Court made clear in *Valley Forge Towers* that a deliberate and systematic practice of selection and appeal may nevertheless violate constitutional principles; in the event the District's method of using recently sold properties as the basis for its selection process violates such principles, it may be invalid regardless of what the Supreme Court may decide in *Kennett*. *See Valley Forge Towers*, 163 A.3d at 975. For purposes of this appeal, then, our analysis is not necessarily impacted by the third *Kennett* question under consideration by the Supreme Court.

The first question accepted by the Supreme Court in *Kennett*, however, challenges a school district's use of a monetary threshold as part of a cost-benefit analysis to determine which property assessments to appeal. Here, Berkshire challenges the District's practice of appealing assessments for recently sold

properties with a differential of at least $150,000 between the current assessed value and the recent sales price, asserting that regardless of the convenience to the District of publicly available sales price information and the practicality of a cost-benefit analysis, any method that differentiates properties based on their value violates constitutional principles. Berkshire's Br. at 18-25; Berkshire's Reply Br. at 11-13.

In *Valley Forge Towers*, our Supreme Court observed that selection methods based on a monetary threshold, as used in cases like *Springfield*, were not before it in that case. *Valley Forge Towers*, 163 A.3d at 979. Notably, however, the Supreme Court also stated that its disapproval of this Court's approach in *Springfield* concerning the school district's intent and differentiation by property type "should not be equated to disagreement with the result [this Court] reached" by upholding the school district's use of a monetary threshold to decide which properties to appeal. *Id.* at 975 n.13. As such, the *Valley Forge Towers* Court implied that so long as a school district's selection method did not discriminate on the basis of property type, use of a monetary formula would not amount to a *per se* constitutional violation. *Id.* at 975 n.13, 979. Further, the Court noted in *Valley Forge Towers* that taxing districts have discretion to determine their assessment appeal policies so long as those policies do not violate constitutional principles. *Id.* at 980.

The current law of Pennsylvania is that a school district's monetary method for selecting property assessments to appeal is within its discretion so long as that method does not differentiate properties based on property type (commercial vis-à-vis residential) or another constitutionally infirm basis. *Valley Forge Towers*, 163 A.3d at 978. As the *Valley Forge Towers* Court recognized, "using public funds wisely and obtaining needed revenues are important objectives" that "do not

necessarily conflict" with constitutional considerations. *Id.* at 979-80. Since *Valley Forge Towers*, we have explained:

> We find nothing in our Supreme Court's analysis in *Valley Forge [Towers]* that precludes application of a reasonable monetary threshold for assessment appeals, based on an estimate of the minimum potential revenue gain that will make a tax assessment appeal cost-effective. Indeed, a taxing district's selection of a property for an assessment appeal that failed to take into account whether the appeal was likely to be cost-effective might well be fiscally irresponsible.
>
> . . . .
>
> Moreover, the use of a reasonable blind monetary screen such as the $10,000 threshold [used by the district here] was expressly approved by this Court in *Springfield* and implicitly approved by our Supreme Court in *Valley Forge [Towers]*. We conclude that the $10,000 threshold is reasonable and does not violate the uniformity requirement of the Pennsylvania Constitution[.]

E. Stroudsburg Area Sch. Dist. v. Meadow Lake Plaza, LLC (Pa. Cmwlth., No. 371 C.D. 2018, filed Oct. 17, 2019), slip op. at 11, 13, 2019 WL 5250831, at **5-6 (unreported).

Here, Berkshire focuses on the constitutionality of the District's use of recent sales prices to select property assessments for appeal; this is an issue of first impression in the context of our precedents, which since *Valley Forge Towers* have focused on (and prohibited) differentiation by type of property. Berkshire argues that the District's use of recent sales prices as a basis to select assessments for appeal amounts to an improper classification resulting in unfair treatment of new property owners as compared with owners whose property has not recently changed hands

and therefore come to the District's attention. There is a difference, however, between selection based on property type, a qualitative approach that *Valley Forge Towers* bars, and selection based on recent sales prices, which are quantitative and reflective of a property's accurate present value regardless of its type. Because the District's method is purely quantitative in nature, beginning with type-neutral listings of recent sales transactions in the monthly STEB reports, we find it does not present the type of constitutional infirmities present in *Valley Forge Towers*.

While acknowledging constitutional requirements, our Supreme Court has consistently recognized that perfection in property assessment may not be possible and that uniformity considerations will not be offended by an otherwise acceptable "salutary methodology to better assure that each taxpayer would pay no more nor less than his fair share, to the extent that such fair share [is] reasonably susceptible of ascertainment." *Downingtown*, 913 A.3d at 205. "Taxation . . . is not a matter of exact science; hence absolute equality and perfect uniformity are not required to satisfy the constitutional uniformity requirement." *Clifton*, 969 A.2d at 1211. This realistic approach dovetails with the Court's recognition that while constitutional principles are primary, the practical fiscal concerns of a school district still matter and may not be ignored. *Valley Forge Towers*, 163 A.3d at 980 (citing *Clifton*).

Applying this principle, we conclude that the District's method of selecting properties for assessment appeals comports with the Commonwealth's present jurisprudence on the subject of property assessment uniformity. Using recent sales prices as part of the selection of properties for appeals is a quantitative method of reasonably ascertaining a property owner's fair share of the tax burden, because such figures represent the kind of evidence of market value that a school

district must show when it appeals an assessment. *See Aetna Life Ins. Co. v. Montgomery Cnty. Bd. of Assessment Appeals*, 111 A.3d 267, 283 (Pa. Cmwlth. 2015) ("evidence of private sales is admissible to determine fair market value").

Further, as applied by the District, this method employs a purely economic approach that is practical for the District yet does not improperly differentiate based on property type, which is the type of approach our Supreme Court condoned in *Valley Forge Towers* and which this Court subsequently accepted in *Punxsutawney* and *East Stroudsburg*. As such, we agree with the trial court that the District's method did not violate either the Equal Protection Clause of the U.S. Constitution or the Uniformity Clause of the Pennsylvania Constitution.

Berkshire argues, however, that the District's method should be held to the same standard as the assessments based on recent property sales that were found to violate equal protection principles in *Allegheny Pittsburgh Coal*. We reject this argument. Berkshire correctly asserts that the District, like the county assessor in *Allegheny Pittsburgh Coal*, is a government entity required to act within constitutional constraints. *See* Berkshire's Br. at 14-17. However, as the trial court explained, while a county assessor has the authority to set and change assessments, a school district may only appeal assessments. *See* Trial Ct. Op. at 7-8. The constitutional problem in *Allegheny Pittsburgh Coal* arose from the county assessor's unilateral reassessments based on recent sales. Here, the District's only recourse to seek adjustment of outdated property assessments is by bringing appeals at its own cost, and it must prove its case in each such appeal with substantial evidence of record before an adjudicatory board that may or may not agree with the District's position. In *Kennett*, for example, the board denied the school district's appeal and refused to increase the assessment on the taxpayer's property. 228 A.3d

at 32. Thus, the District must consider the cost effectiveness of each assessment appeal it decides to undertake.

Thus, to the extent that we find the District's method here satisfies Pennsylvania's uniformity requirements as set forth in *Valley Forge Towers*, the fact that the assessor in *Allegheny Pittsburgh Coal* used recent sales as a basis for unilateral reassessments does not make that case controlling here, and the trial court did not err in distinguishing it.

Berkshire also asks this Court to consider two uniformity cases not addressed by the trial court, *Mount Airy #1, LLC v. Pennsylvania Department of Revenue*, 154 A.3d 268 (Pa. 2016), and *Nextel Communications, Inc. v. Department of Revenue*, 171 A.3d 682 (Pa. 2017). Berkshire cites these cases in support of its position that differential tax treatment based on the price or value of the thing being taxed, here the cost-benefit $150,000 threshold used by the District to appeal assessments, violates uniformity principles.

In *Mount Airy #1*, our Supreme Court considered a challenge to a provision of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §§ 1101-1904, that essentially created a variable-rate tax on casinos, in effect "fashioning one rate for non-Philadelphia casinos with slot machine revenue below $500 million and another for non-Philadelphia casinos with slot machine revenue greater than $500 million." 154 A.3d at 276. In *Nextel*, the Court considered a challenge to a provision of the Tax Reform Code of 1971, Act of March 4, 1971, P.L. 6, *as amended*, 72 P.S. §§ 7101-10004, that allowed corporations with taxable income under $3 million to deduct net losses from prior years while refusing the same advantage to corporations with taxable income in excess of $3 million. 171 A.3d at 685. Thus, both cases involved the application of differing tax *rates* based

on the amount or value of the thing being taxed, an issue not present in this case. Those cases are also distinguishable because the taxable properties at issue were slot machine revenue (*Mount Airy #1*) and corporate income tax (*Nextel*), which are subject to their own specific statutory taxation schemes and bodies of law. This case concerns the methods by which school districts may select property tax assessments for appeal, and there is ample on-point precedent, not least of which is *Valley Forge Towers*.

Also, the disparate treatment in *Mount Airy #1* and *Nextel* was based solely on revenue or income amounts. Here, the recent sales price of a real estate property is not the sole basis the District uses to select assessments to appeal. The District begins with that information, applies the CLR, compares the resulting figure with the prior assessment, and only appeals if the difference exceeds $150,000. By contrast, a property may sell this year for millions of dollars, but if it previously changed hands within the past few years, it may already have been reassessed. If so, the differential may not exceed $150,000, and it will not be selected for appeal. Thus, the market value or recent sales price alone is not the basis for any differential treatment by the District. For these reasons, *Mount Airy #1* and *Nextel* are neither on-point nor controlling here, and Berkshire has not established that the District's appeal selection method violates constitutional principles.

IV. Conclusion

Based on the foregoing discussion, we affirm the trial court's order overruling Berkshire's objections to the District's assessment appeal.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC, Appellants	:	
v.	:	
Berks County Board of Assessment and Wilson School District	:	No. 930 C.D. 2020

ORDER

AND NOW, this 8th day of July, 2021, the order of the Court of Common Pleas of Berks County is AFFIRMED.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

Certified from the Record

JUL - 8 2021

And Order Exit

APPENDIX E

Purdon's Pennsylvania Statutes and Consolidated Statutes
Constitution of the Commonwealth of Pennsylvania (Refs & Annos)
Article VIII. Taxation and Finance

Const. Art. 8, § 1

§ 1. Uniformity of taxation

Currentness

All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Credits
Renumbered from Art. 9, § 1, July 7, 1967. Amended April 23, 1968.

Notes of Decisions (786)

Const. Art. 8, § 1, PA CONST Art. 8, § 1
Current through May 18, 2021, Primary Election.

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APPENDIX F

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 53 Pa.C.S.A. Municipalities Generally (Refs & Annos)
Part VII. Taxation and Fiscal Affairs
Subpart C. Taxation and Assessments
Chapter 88. Consolidated County Assessment (Refs & Annos)
Subchapter B. Subjects of Local Taxation; Exceptions; Special Provisions on Assessments

53 Pa.C.S.A. § 8817

§ 8817. Changes in assessed valuation

Effective: January 1, 2011
Currentness

(a) General rule.--In addition to other authorization provided in this chapter, the assessors may change the assessed valuation on real property when a parcel of land is subdivided into smaller parcels or when improvements are made to real property or existing improvements are removed from real property or are destroyed. The recording of a subdivision plan shall not constitute grounds for assessment increases until lots are sold or improvements are installed. The painting of a building or the normal regular repairs to a building aggregating $2,500 or less in value annually shall not be deemed cause for a change in valuation.

(b) Construction.--A change in the assessed valuation on real property authorized by this section shall not be construed as a spot reassessment under section 8843 (relating to spot reassessment).

Credits
2010, Oct. 27, P.L. 895, No. 93, § 2, effective Jan. 1, 2011.

Notes of Decisions (27)

53 Pa.C.S.A. § 8817, PA ST 53 Pa.C.S.A. § 8817
Current through 2022 Regular Session Act 13. Some statute sections may be more current, see credits for details.

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