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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 OF *AMICI CURIAE*, THE SCHOOL DISTRICT OF PHILADELPHIA, AND THE PITTSBURGH PUBLIC SCHOOL DISTRICT IN SUPPORT OF APPELLEE WILSON SCHOOL DISTRICT

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

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Pursuant to Pa.R.A.P. 531(b)(1)(i), the School District of Philadelphia and the Pittsburgh Public School District respectfully submit this joint Brief.

Established in 1818, the School District of Philadelphia is one of the largest and oldest school districts in the country. Today, this School District works tirelessly together with parents, families, volunteers, and community members to support the limitless potential of more than 203,000 young scholars.

The Pittsburgh Public School District is the largest of 43 school districts in Allegheny County and second largest in Pennsylvania. The District serves approximately 25,000 students in Pre-Kindergarten through Grade 12. In addition, Early Childhood programs serve 1,614 children, ages three and four, in classrooms across the City of Pittsburgh.

To fulfill their shared mission of providing a thorough and efficient education to all their students, the Philadelphia School District, and the Pittsburgh Public School District (like the other 498 school districts in the Commonwealth) are financially dependent on revenue generated from local real estate taxes. The present litigation, however, poses a serious threat to the continued ability of taxing districts to exercise their century-old statutory right to contest the accuracy of the real estate "assessments" upon which these local taxes are based. More particularly, the instant appeal involves an "as applied" constitutional challenge to the manner in which the

Appellee, Wilson School District ("District"), exercised its statutory right and selected properties for tax assessment appeals.

Undeniably, the ability to appeal under-assessed properties and, if successful, receive the *correct* and increased amount of taxes from a taxpayer, continues to be one of most valuable revenue-generating tools possessed by taxing districts. Of course, revenue from local real estate taxes is not just a major source of the state's school-funding system, it is an indispensable source of funding for county-provided social services, mental health services, child welfare services, county court-related services, and other vital municipal services like police, fire, and road maintenance.

Because of the profound impact this case may have on future funding of the public services provided by Pennsylvania's sixty-seven (67) counties, five hundred (500) school districts, and two thousand five hundred sixty-one (2,561) cities, boroughs, incorporated towns, and townships, the School District of Philadelphia and the Pittsburgh Public School District have a direct and significant interest in the outcome of this case.

As part of their on-going efforts to promote fundamental tax fairness for all real property owners, the School District of Philadelphia and the Pittsburgh Public School District routinely exercise their discretionary right to file real estate tax assessment appeals to underassessed properties in their respective jurisdictions, and steadfastly strive to select and prosecute such appeals within constitutional

boundaries in accordance with existing case law. Of course, to do so, your *Amici Curiae*, like all other taxing districts, must keep abreast of, adhere to, and be able to depend upon the latest judicial decisions affecting the evolving assessment law landscape in Pennsylvania, especially the pronouncements of this Honorable Court and the intermediate appellate courts of this Commonwealth.

With the foregoing in mind, it should be noted that the assessment appeal selection process under attack in the present appeal was adopted by the District in June of 2018 and was undeniably fashioned after the policy upheld by the Commonwealth Court in *In re Appeal of Springfield School District*,[1] which policy was implicitly sanctioned by this Court in its seminal 2017 assessment law decision in *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District,* 640 Pa. 489, 163 A.3d 962 (2017).

Like the selection process at issue in the instant appeal, the School District of Philadelphia, since 2018, and the Pittsburgh Public School District, long before that, have exclusively selected properties for assessment appeals based on recent sales price in conjunction with an established monetary threshold. In fact, in further confirmation of their direct interest in this case, your *Amici Curiae* currently have

[1] *In re Appeal of Springfield School District*, 101 A.3d 835 (Pa. Cmwlth. 2014); *petition for allowance of appeal denied* 632 Pa. 696, 121 A.3d 497 (2015); *overruled in part on other grounds* by *Valley Forge Towers*, 163 A.3d at 975 n.13. In *Springfield,* appeals were only filed if a recent sales price was at least $500,000 greater than the property's implied market value (i.e., assessed value divided by the applicable common level ratio).

hundreds of such appeals pending before the Courts of Common Pleas of Philadelphia and Allegheny County.

Accordingly, in consideration of their collective interests in this matter, and based upon the arguments set forth herein, your *Amici Curiae* respectfully submit this Brief to support the constitutionality of the assessment appeal policy/selection process of the District and to oppose the challenge advanced thereto by Appellants, GM Berkshire Hills LLC, and GM Oberlin Berkshire Hills LLC (together, "Berkshire").[2]

STATEMENT OF CONCURRENCE IN PRELIMINARY MATTERS

Your, *Amici Curiae*, the School District of Philadelphia, and the Pittsburgh Public School District, concur in such statements as are made in the Brief of Appellee, Wilson School District, regarding Jurisdiction, the Order or Other Determination in Question, the Scope and Standard of Review, the Questions Involved, and the Statement of the Case.

[2] The School District of Philadelphia and the Pittsburgh Public School District hereby certify that no person or entity other than your *Amici Curiae* authored or paid in whole or in part for the preparation of this Brief. (*See also* Certification Pursuant to PA.R.A.P. 531(B)(2)(i)(ii), which is attached hereto).

SUMMARY OF ARGUMENT

Based on the questions accepted for review in the instant matter, certain recurring assessment law issues left open in *Valley Forge Towers* can now be definitively resolved by this Honorable Court. Specifically, since *Valley Forge Towers* was decided, taxpayers, like Berkshire, have refused to accept this Court's implicit approval of assessment appeal policies like the one challenged in *In re Appeal of Springfield School District*. The policy now before the Court, however, is the embodiment of the type of policy endorsed in *Valley Forge Towers* – not only does it mirror the methodology employed in *In re Appeal of Springfield School District* (i.e., selecting properties for appeal based on recent sales price in conjunction with a reasonable monetary threshold), it was implemented, as this Court cautioned, without regard to the type of property in question, the residency status of its owner, or any other constitutionally impermissible classification of property.

Over the course of the last century, taxing districts have possessed the exact same statutory and procedural rights of appeal as enjoyed by taxpayers in assessment matters. These reciprocal rights of appeal are an integral part of Pennsylvania's comprehensive statutory assessment scheme. The concurrent ability of *both* sides to file appeals promotes and preserves uniformity of existing assessments and safeguards the fundamental fairness and integrity of the local real estate tax system.

Consequently, the utilization of the assessment appeal process to achieve and preserve uniformity would be out of balance and ultimately ineffective if only one side was permitted to pursue assessment appeals. The present case, however, jeopardizes the continued existence of the right of appeal repeatedly and consistently conferred upon taxing districts for the past 100 years by the General Assembly.

From a factual and legal standpoint, there is no better method for a taxing district to select properties for appeal than the policy adopted and implemented by the District in this case. Considering *Valley Forge Towers* together with the realities and practicalities of a taxing district using recent sales price in conjunction with a reasonable monetary threshold, if the District's policy does not pass constitutional muster, then the right of taxing districts to file assessment appeals is dead.

Fortunately for taxing districts, there does not seem to be any real doubt that monetary thresholds may properly be used by taxing districts so long as they are implemented without any constitutionally impermissible classification of property. With respect to this final issue, Berkshire's contention that the District's policy constitutes an impermissible "classification of properties" within the meaning of the Uniformity Clause is incorrect and without any known legal support.

Based on the foregoing, the District's policy does not violate any constitutional precept and the decision of the Commonwealth Court, upholding the determination of the trial court, should be affirmed.

ARGUMENT

A. The instant action presents this Honorable Court with an opportunity to issue a firm and binding judicial pronouncement that definitively resolves certain recurring assessment law issues left open in *Valley Forge Towers*.

The present case epitomizes the assessment law controversy that has been raging throughout the Commonwealth for the past five years. From the time *Valley Forge Towers* was decided by this Honorable Court in July of 2017, taxing districts have relied upon this decision to formulate and adopt assessment appeal policies consistent with the principles enunciated therein, while taxpayers, on the other hand, have relied upon this decision as support for an endless stream of constitutional challenges lodged to practically every assessment appeal initiated by taxing districts.

Regardless of the process used by taxing districts to select properties for assessment appeals, the affected property owners have consistently attempted to pigeon-hole the facts of their respective cases into the fact pattern condemned as unconstitutional in *Valley Forge Towers*. Perhaps not surprisingly, in almost every one of these appeals, including the instant case, each side claims *Valley Forge Towers* fully supports their diametrically opposed positions.

Of course, depending on the issue in dispute, the taxpayers and taxing districts also have regularly accused each other of reading *Valley Forge Towers* either too broadly or too narrowly. For example, when a taxing district claims *Valley Forge Towers* implicitly sanctions the selection of properties for appeal based on a

monetary threshold, the taxpayers argue the taxing district is reading the decision too broadly since such methodologies were not before the Court and, as such, any discussion in the opinion concerning their use is mere *dicta*.

Conversely, when a taxing district contends this Court expressly "limited" its holding to the specific appeal policy at issue therein ("in terms of its classification of properties by type and/or the residency status of their owners"), the taxpayers argue the taxing district is reading the decision too narrowly. *See Valley Forge Towers*, 163 A.3d at 980. In fact, this second argument is what has fueled the most common disagreement between taxpayers and taxing districts – which is whether the appeal policy at issue in each case is based on an improper or invalid "classification" of real estate within the meaning of the uniformity clause of the Pennsylvania Constitution, as construed in *Valley Forge Towers*.

At last, it appears that some of these recurring issues can be put to rest. Based on the questions accepted for review in the instant matter, this Honorable Court is now in a position to issue a firm and binding decision confirming what this Court previously suggested in *Valley Forge Towers* – that a taxing district's policy of selecting only certain recently-sold properties which satisfy an established and reasonable monetary threshold is an acceptable nondiscriminatory method for choosing properties for assessment appeals.

B. The assessment appeal policy/selection process used by the District does not violate the United States Constitution's Equal Protection Clause, the Pennsylvania Constitution's Uniformity Clause, or the dictates of *Valley Forge Towers* or any other decision cited or relied upon by Berkshire.

Preliminarily, it should be noted that it is not the purpose of this Brief to simply repeat the arguments advanced by the District or to reiterate the holdings of the Court of Common Pleas of Berks County (the "trial court") or the Commonwealth Court. In that regard, suffice it to say, your *Amici Curiae* agree with the decision of the trial court, as affirmed by the Commonwealth Court, wherein it was held that the real estate tax assessment appeal policy/selection process used by the District in this case does not violate the United States Constitution's Equal Protection Clause, the Pennsylvania Constitution's Uniformity Clause, or the dictates of *Valley Forge Towers* or any other decision cited or relied upon by Berkshire.

Consequently, with respect to the many issues and decisions not addressed herein, your *Amici Curiae* respectfully defer to, and concur with the erudite Opinions issued by the trial court and Commonwealth Court, as well as the persuasive arguments advanced by the District throughout this matter. Thus, while some repetition is unavoidable, it will be kept to a minimum.

C. The permissive right of a taxing district to file an assessment appeal is an indispensable, century-old, part of Pennsylvania's comprehensive statutory assessment scheme.

The assessment appeals at issue herein were initiated by the District pursuant Section 8855 of the Consolidated County Assessment Law (53 Pa.C.S. §§ 8801–

8868)(the "Assessment Law"). Section 8855 grants a taxing district[3] "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.

Interestingly, in one form or another, Pennsylvania *taxpayers* have possessed a statutory right to appeal the assessment of their property since at least 1834.[4] Eventually, this right was expanded in 1876 to allow taxpayers to appeal to the courts of common pleas from adverse decisions on their initial appeals[5] and, in 1901, to permit taxpayers to appeal to the Superior and Supreme Courts from adverse decisions of the court of common pleas.[6] In fact, these statutory rights of appeal have been continuously retained by taxpayers ever since their original enactment, and currently can be found at 53 Pa.C.S. §§ 8844 and 8854 (with respect to every county in Pennsylvania except Allegheny and Philadelphia), and 72 P.S. §§ 5020-511, 5020-518.1 and 5020-519 (with respect to Allegheny and Philadelphia Counties).

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[3] As used in this statute, a "taxing district" is defined as "[a] county, city, borough, incorporated town, township, school district or county institution district." 53 Pa.C.S. § 8802.

[4] See, e.g., Act of April 15, 1834, P.L. 509, No. 232 ("An Act relating to county rates and levies and township rates and levies"), §§ 9-16.

[5] Act of April 20, 1876, P.L. 44, No. 32 ("An Act Authorizing appeals from assessments in this commonwealth to the court of common pleas").

[6] Act of June 26, 1901, P.L. 601, No. 296 ("An Act Authorizing appeals from the decision of the various courts of common pleas, in assessment of taxes case, to the Supreme or Superior Court of the Commonwealth").

Although taxpayers have long possessed these rights of appeal in real estate tax assessment matters, it was not until May 10, 1921, that the Pennsylvania General Assembly granted taxing districts the right to file assessment appeals.[7] This Act authorized boroughs, townships, school districts, and poor districts that felt aggrieved by an assessment of any property to appeal in the same manner as would a taxpayer with respect to his/her property. Like the taxpayers, the taxing districts have continuously retained this statutory right of appeal ever since its original enactment, and it currently can be found at 53 Pa.C.S. § 8855 (with respect to every county in Pennsylvania except Allegheny and Philadelphia), and 72 P.S. § 5020-520 (with respect to Allegheny and Philadelphia Counties).

Although the available legislative record does not indicate what prompted passage of this Act, it does indicate that this legislation originated as Senate Bill No. 936 and that it sped from introduction to final passage in just seventeen days, with unanimous approval in both houses of the General Assembly. *See*, *History of Senate Bills-Also House Bills in the Senate,* Pennsylvania General Assembly (1921). Perhaps, however, an observation made more recently by this Court in *Clifton v. Allegheny County*, 600 Pa. 662, 969 A.2d 1197 (2009) may explain why every

[7] Act of May 10, 1921, P.L. 441, No. 214 ("An act authorizing boroughs, townships, school districts, and poor districts to appeal from assessments of property or other subjects of taxation for their corporate purposes.").

member of the General Assembly, a century ago, so quickly and unanimously agreed to grant taxing districts the right to appeal from assessments within their jurisdiction:

> Furthermore, successful taxpayer appeals do not increase the assessments of under-assessed properties, whose owners have no reason to appeal. Assessments of under-assessed properties are only "forced" into conformity with the county [common level ratio] by an appeal of an aggrieved municipal entity, most often the school district, and the extent to which taxing bodies pursue assessment appeals varies from municipality to municipality.

Clifton v. Allegheny County, 600 Pa. at 713, 969 A.2d at 1228. In short, when periodic countywide reassessments fall short of maintaining uniformity, the appeal process as a tool for making up some of the difference is ineffective if it is completely one-sided.

Undoubtedly, the General Assembly, like the *Clifton* Court, recognized that between intermittent countywide reassessments, when deviations in value most likely arise, an accurate and uniform real estate tax base can only be preserved if ***both*** sides are permitted to challenge the accuracy of assessments by which they may be aggrieved. By virtue of these reciprocal rights of appeal, taxpayers can assure they pay no more than their fair share of real estate taxes, and taxing districts can assure they receive no less than fairly should be paid. Consequently, the utilization of the assessment appeal process to achieve and preserve uniformity would be out of balance and ultimately ineffective if only one side was permitted to pursue assessment appeals.

So essential is its role in Pennsylvania's statutory assessment scheme, that the right of taxing districts to file appeals in the same manner as taxpayers has been included in *every* assessment law enacted since this right was originally granted in 1921. Thus, there is no doubt that the Pennsylvania General Assembly, over the course of the last century, has believed, and continues to believe, that the right of appeal granted to taxpayers and taxing districts, *alike*, is an integral part of the overall comprehensive statutory assessment scheme in this Commonwealth.

Moreover, while it is true that successful taxing district-initiated appeals may operate as a tool to force under-assessed properties back into uniformity and thereby generate additional tax revenue, there is, in fact, a much loftier goal accomplished by these appeals – they safeguard the fundamental fairness and integrity of the local real estate tax system. The true importance of this fact cannot be overstated and must not be overlooked.

Undeniably, a paramount concern of the governing body of every taxing district is to consistently conduct official business in a manner that maintains and fosters public confidence in the integrity and fairness of the way taxes are assessed, collected, and spent. As this Court has observed:

> 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.

Delaware, L. & W. R. Co.'s Tax Assessment, 224 Pa. 240, 243, 73 A. 429 (1909).

In keeping with this precept, the Uniformity Clause of the Pennsylvania Constitution provides that "[a]ll 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. This constitutional provision ensures that "a taxpayer should pay no more or no less than [the taxpayer's] proportionate share of the cost of government." *In re Sullivan*, 37 A.3d 1250, 1254-55 (Pa. Cmwlth. 2012) (quoting *Deitch Co. v. Bd. of Prop. Assessment Appeals & Review of Allegheny Cty.*, 209 A.2d 397, 401 (Pa. 1965)). In other words, uniformity in taxation is about every taxpayer paying his or her fair share of the tax burden, a basic concept not adhered to in this matter by Berkshire.

As noted by both the trial court and Commonwealth Court, even though Berkshire purchased the properties in question in November of 2017 for a combined sale price of $54,250,000, it seeks to dismiss the instant appeals so it can continue to pay tax on a combined implied fair market value of $15,253,577. (*See* Trial Court Opinion at p. 4, ¶ 16). When taxpayers, like Berkshire, attempt to evade paying their fair share of taxes on *knowingly under-assessed properties*, the remaining taxpayers must pay a higher share to subsidize those scofflaws. Of course, the taxpayers who are forced to carry a disproportionate share of the tax burden have no direct means to challenge this inequity other than to depend on taxing districts to pursue appeals to correct the unfair distribution of the tax burden.

Based on the foregoing, not only do assessment appeals initiated by taxing district promote and preserve uniformity of existing assessments, but they also indisputably safeguard the fundamental fairness and integrity of the local real estate tax system. As such, your *Amici Curiae* respectfully submitted that this vital statutory right – repeatedly and consistently conferred upon taxing districts for 100 years by the General Assembly – is an indispensable part of Pennsylvania's comprehensive statutory assessment scheme.

D. Although not presented as a "facial challenge" to the constitutionality of the statute which grants taxing districts the right to file assessment appeals, the outcome of this case, like such a challenge, could be the death knell of this right.

The above section stressing the indispensable nature of the right of appeal conferred upon taxing districts in assessment matters may, at first glance, seem misdirected since Berkshire is not challenging the constitutionality of Section 8855 of the Assessment Law on its face. The reality is, however, that while the instant appeal supposedly only challenges the constitutionality of the relevant statute "as applied" in this case, the outcome of this matter may effectively take away this right forever – no differently than if this Court were to declare the statute itself as unconstitutional.

As aptly observed by the Commonwealth Court, 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." *Berkshire v.*

Wilson School District, 257 A.3d 822, 828 (Pa. Cmwlth 2021). Needless-to-say, your *Amici Curiae* absolutely agree that if the selection process at issue herein does not pass constitutional muster, then the statutory right of taxing districts to file assessment appeals, without exaggeration or hyperbole, will cease to exist in this Commonwealth.

Because Section 8855 places no restrictions on the exercise of the permissive right of appeal granted therein, "[t]he particular appeal policy employed by a taxing district lies within its discretion." *Valley Forge Towers*, 163 A.3d at 980. However, when taxing districts select properties for assessment appeals, they must exercise their discretion within constitutional boundaries. *Id* at 978. As this Court has noted, "although Section 8855 may be facially valid, that alone does not shield the government from as-applied challenges." *Id.* at 978, n. 18. Accordingly, here, as in *Valley Forge Towers*, this Honorable Court's "task is limited to enforcing the constitutional boundaries of any such approach," which, in this case, entails deciding whether the appeal policy employed by the District "transgresses those boundaries." *Id* at 980.

In determining the parameters of these constitutional boundaries, this Court, in *Valley Forge Towers*, succinctly summarized certain fundamental principles regarding property taxation as follows:

> 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. [Citations omitted]. Second, this prohibition applies to any intentional or systematic enforcement of the tax laws, and is not limited solely to wrongful conduct. [Citations omitted].

Id at 975. Consistent with these constitutional precepts, the Court held "that 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.

In addition to the foregoing, this Court (when rejecting an argument by the school district concerning the possible necessity of having to appeal every under-assessed property in the district) expressly acknowledged that "[t]here are other, nondiscriminatory, methods of deciding which properties to appeal." *Id.* at 977. Although the Court did not immediately expand upon or give examples of these "other" nondiscriminatory selection methods, the Court later went to great lengths to distinguish between impermissible assessment appeal policies which treat different property sub-classifications in a disparate manner, and permissible appeal policies which select properties for appeal based on recent sales price in conjunction with a monetary threshold and without regard to any classification of properties by type and/or the residency status of their owners. In fact, this Court specifically agreed with the result reached by the Commonwealth Court in *In re Springfield School*

District, *supra*, which upheld a school district's policy of appealing only properties where a recent sales price was at least $500,000 greater than the property's implied market value (i.e., assessed value divided by the applicable common level ratio). *Id.* at 976, n. 13.

Based on the constitutional boundaries identified by this Court in *Valley Forge Towers*, taxing districts felt confident they could formulate and adopt policies that would fall squarely within these delineated boundaries and could properly exercise their statutory assessment appeal rights. Undeniably, that is what the District thought and did in this case. It fashioned its policy after the one upheld in *In re Springfield School District*, as implicitly approved in *Valley Forge Towers*.

The District's policy was straightforward. It selected recently sold properties from the monthly State Tax Equalization Board ("STEB") reports, then used the applicable common level ratio ("CLR") to calculate the differential between those properties' recent sales prices and the previous assessed value, and appealed assessments where the differential was at least $150,000. R. 38a at ¶ 7. It did not differentiate or rely on any classification of properties by type and/or the residency status of their owners.[8] Rather, it relied on publicly available information which, according to the trial court, provided "a reasonable facsimile to fair market value,"

[8] Appeals were filed by the District to all types of properties, including properties classified as "industrial, farm, commercial, residential, and apartment complexes." Trial Court Opinion at 4.

and "did not deliberately choose to appeal one property and reject another" based on any unconstitutional premise. Trial Court Opinion at 13-15.

Without any doubt, if the District's policy is found to transgress the acceptable constitutional boundaries identified in *Valley Forge Towers*, then taxing districts throughout the Commonwealth will be throwing their hands in the air and shaking their heads in disbelief. If this policy is not one of the "other, nondiscriminatory, methods" of selecting properties, as referenced in *Valley Forge Towers*, then taxing districts will be at a collective loss to figure out what is an acceptable method. Moreover, if the District's policy is found to be constitutionally infirm, then there is **no** policy which will pass constitutional muster and the right of taxing districts to appeal assessments in Pennsylvania is dead.

First, sales price is a criterion applicable to all property types. Second, recent sales data is unquestionably the best available and most reliable method for a taxing district to identify underassessed properties. This free public information is not only readily available, but also easily accessible and verifiable by taxing districts.

Next, a recent sales price is the most objective and persuasive evidence a taxing district can secure concerning the value of a property. This is true because a property's sales price is one of the most critical elements upon which Pennsylvania assessment law is based. In that regard, the Assessment Law states that in arriving at the "actual value" of a property for purposes of determining an initial assessment,

the county assessment office "shall" consider "the price at which any property may actually have been sold." 53 Pa.C.S. § 8842(b)(1)(i). While, admittedly, the sales price of a property, in and of itself, is "not controlling" in the determination of its "actual value," it is the starting point of the entire assessment process. *Id.* Similarly, under the Assessment Law, appeal hearings before both the board and trial court begin with a required determination of the "market value" of the challenged property. 53 Pa.C.S. §§ 8844(e)(2) and 8854(a)(2)(i). Not surprisingly, these synonymous terms are defined as the sales price of a property in an arm's length transaction. As stated by this Court:

> "Actual value means market value." *McKnight Shopping Ctr., Inc. v. Board of Property Assessment of Allegheny County*, 417 Pa. 234, 238, 209 A.2d 389, 391 (1965). "Market value," in turn, is defined as "the price which a purchaser, willing but not obliged to buy, would pay an owner, willing but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied." *Buhl Found. v. Board of Property Assessment of Allegheny County*, 407 Pa. 567, 570, 180 A.2d 900, 902 (1962) (quoting *Brooks Bldg. Tax Assessment Case*, 391 Pa. 94, 97, 137 A.2d 273, 274 (1958)).

Green v. Schuylkill County Board, 565 Pa. 185, 195 n.6 (Pa. 2001). *See also Aetna Life Ins. Co. v. Montgomery Cnty. Bd. of Assessment Appeals*, 111 A.3d 267, 283 (Pa. Cmwlth. 2015) ("evidence of private sales admissible to determine fair market value"). Thus, as recognized by the General Assembly and the Courts, a property's sales price is a fair indicator of its value.

Finally, if a taxing district is constitutionally prohibited from using a property's recent sales price as the starting point of its appeal selection process, then short of having a certified appraisal performed, there is no legitimate way for the taxing district to determine if that property is correctly assessed. Unfortunately, however, taxing districts cannot have appraisals prepared because they have no legal right to inspect the interior of taxpayers' properties or to demand financial records for completion of each of the three valuation methodologies required to be considered and included in such an appraisal (i.e., the cost approach, the comparative sales approach, and the income approach).

E. Berkshire's contention that the District's policy constitutes an impermissible "classification of properties" within the meaning of the Uniformity Clause is incorrect and without any known legal support.

Berkshire contends the District's policy of considering and selecting only recently sold properties for assessment appeals constitutes a constitutionally impermissible "classification of properties" (i.e., recently sold properties versus properties that were not recently sold). Your *Amici Curiae* respectfully submit that there is no known legal support for this proposition. Contrary to the underlying premise of Berkshire's claim, a property sale is nothing more than a commercial transaction which occurs with respect to *all* property types – commercial, apartment complex, single-family residential, industrial, or the like.

Certainly, there is no basis in law or fact to rightfully say that "recently sold properties" or "properties that were not recently sold" are recognized "types" of property within the meaning of the constitutional prohibitions enunciated in *Valley Forge Towers*. More generally, simply because a party can point to some difference or distinction between the properties that fall inside and those that fall outside of a particular assessment appeal policy does not mean that an invalid classification of real estate within the meaning of the uniformity clause has occurred.

Contrary to Berkshire's position, not every imaginable characterization, comparative description, differentiation, or distinction between properties selected for appeals and properties not selected for appeals constitutes a violation of constitutional principles. If this was the standard, then a taxing district would have to appeal *every* assessment by which it was aggrieved, or else the affected taxpayers could assert that the selection of their property was the result of an impermissible classification (i.e., properties whose assessments were appealed versus properties whose assessments were not appealed). Obviously, this is not law, but it highlights the point that if taxing districts do not appeal every under-assessed property, then taxpayers will *always* be able to articulate some distinction between the properties whose assessments were appealed and those that were not.

Thus, the real question in this case is not whether the District's appeal policy is based on some articulable distinction between the properties selected for appeal

and those which were not selected for appeal, it is whether the policy is based on an invalid classification of property under the uniformity clause.

In a landmark decision issued in 1967, this Court ended any confusion in this Commonwealth and firmly held that all realty, for purposes of taxation, is a single class entitled to uniform treatment. *In re Lower Merion Twp.*, 427 Pa. 138, 233 A.2d 273 (Pa. 1967).[9] In an often-quoted passage, the Court stated:

> Admittedly the uniformity clause of the Pennsylvania Constitution has followed a path through our courts that is easily as unpredictable and winding as Alice's road through Wonderland. No provision in our constitution has been so much litigated yet so little understood; and certainly not the least thorny question has been whether real estate as a whole constitutes a class which cannot be further broken down for tax purposes. To put to rest some of this confusion, we hold today that real estate as a subject for taxation may not validly be divided into different classes.

In re Lower Merion Twp., 427 Pa. at 143.

Interestingly, while the decision in *In re Lower Merion Twp.* is usually remembered for the above quote and principle, its actual holding seems to have been obscured by time. Remarkably, although this case is frequently cited for its pronouncement prohibiting "classification of real estate," the part of the holding most relevant here is the Court's *rejection* of one of the taxpayers' "classification"

[9] Notably, this decision was more recently cited and relied upon by this Court in *Clifton*, 600 Pa. at 688, and *Valley Forge Towers,* 163 A.3d at 979.

arguments. In that regard, one of the taxpayers' classification arguments challenged the constitutionality of certain statutory provisions which allowed the reassessment of real property to reflect increases in value resulting from new construction made during the tax year. The taxpayers complained that there was no valid basis for the statutes in question to authorize interim assessments based on increased property value only when that increase was due to new construction but not when it was due to "other factors, such as general market conditions." *In re Lower Merion Twp.*, 427 Pa. at 147. In striking down this claim, the Court held:

> We do not agree however that this latter distinction is a classification of real estate within the meaning of the uniformity clause.
>
> No matter how an interim assessment statute is drafted, the property can be reassessed only when its value has increased. Accordingly, there must be some way to tell *when* it is worth more, and how much more it is worth. It would not only be unworkable as a practical matter to force an assessor to keep detailed records of all conditions that might affect the market value of a piece of land, but, ironically, were such a task dictated by our constitution as a prerequisite for an interim assessment, the vagueness and guesswork involved in *that* system would likely spawn the very untrammeled discretion that appellants fear. As a result, the Legislature has wisely directed that interim assessments be based on a barometer of increased value that is not only easy to read, but is also likely to give an accurate and fair measurement: the presence of physical improvements on the property. The basic interim assessment law does not classify real estate. It merely sets up a scale on which property is to be valued. No class is favored; and all real estate is subject to the

> same interim assessment statute provided its value increases on the measuring scale set up by the Legislature.

Id. at 147-148.

As noted by the Court, since the statutory provisions at issue granted a right to reassess a property "only when its value has increased," then there must be a way to tell when this occurs and by how much the value has increased. Similarly, in the instant matter, if the District truly has the right to appeal properties only when they are aggrieved by a property's under-assessment, then there must be a way for the District to tell when this occurs and by how much the property is underassessed. In *In re Lower Merion Twp.*, "the presence of physical improvements on the property" acted as a "barometer of increased value" that was "easy to read" and "likely to give an accurate and fair measurement." *Id.* In this case, a recent sale of a property acts as a barometer of the accuracy of the current assessment that is easy to read and likely to give an accurate and fair measurement. As such, the District's policy does not classify real estate. It merely sets up a trustworthy scale on which the accuracy of assessments may be evaluated. It does not favor any class since it applies equally and uniformly to every property type. In short, the District's policy is not based on an invalid classification of real estate within the meaning of the uniformity clause.

Finally, while Berkshire takes issue with the "quantitative versus qualitative" discussion of the Commonwealth Court, your *Amici Curiae* do not believe, as suggested by Berkshire, that this was an attempt to fashion any new test to determine

constitutionality. On the contrary, your *Amici Curiae* suggest that the Commonwealth Court was merely attempting to explain that the District's method of selecting properties for appeal employs a purely economic approach, which is a more objective, than subjective, analysis.

In the end, regardless of the reasoning employed or explanations offered, your *Amici Curiae* agree with the District, the trial court, and the Commonwealth Court, that the assessment appeal policy at issue herein – in terms of its use of recent sales prices in conjunction with an established monetary threshold – does not transgress any constitutional boundaries.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Brief of Appellee, Wilson School District, the decision of the Commonwealth Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Raymond P. Wendolowski, Esquire, hereby certify that the foregoing Brief of *Amici Curiae* complies with the Pennsylvania Rules of Appellate Procedure, including the length and word limits of Pa. R.A.P. 531(b)(3), as it contains 6328 words, as measured by the word processing software on which it was prepared. I further certify, pursuant to Pa. R.A.P. 127, 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.

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CERTIFICATION PURSUANT TO PA.R.A.P. 531(B)(2)(i)(ii) OF *AMICI CURIAE,* THE SCHOOL DISTRICT OF PHILADELPHIA, AND THE PITTSBURGH PUBLIC SCHOOL DISTRICT

In accordance with Pa. R.A.P. 531(B)(2)(i)(ii), the undersigned, as Co-Counsel for *Amici Curiae*, the School District of Philadelphia, and the Pittsburgh Public School District, hereby certify that there is no person or entity other than the *amici curiae*, its members, or counsel who: (i) paid in whole or in part for the preparation of the *amici curiae* brief or (ii) authored in whole or in part the *amici curiae* brief.

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