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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

Docket 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 APPELLEE WILSON SCHOOL DISTRICT

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

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I. COUNTER-STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

1. The District's Annual Tax Assessment Resolution.

Pursuant to the statutory authority extended to it (53 Pa. C.S.A. § 8855), the Wilson School District's (the "District") Board of School Directors passes an annual tax assessment appeals resolution. [R. 37a-38a]. Relevant to this litigation, the annual resolution, passed on June 18, 2018 (the "Resolution"), addresses what property assessment appeals the District will initiate before the Berks County Board of Assessment Appeals ("Assessment Board"). [R. 37a-38a].

The Resolution sets forth the criteria the District's Business Office is to use to determine, with the assistance of the District's Solicitor and a retained professional appraiser, which property assessments to appeal. [R. 37a]. Specifically, the Resolution fixes a monetary threshold that must be satisfied prior to initiating any assessment appeal: the District would only initiate assessment appeals for those 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 at ¶ 7].

Importantly, the Resolution does not authorize the consideration of a property's type or subtype when identifying the assessment appeals to pursue (or to refrain from pursuing). [R. 37a–39a]. The District's Chief Financial Officer,

Christine Schlosman, CPA, testified on the District's behalf before the Berks County Court of Common Pleas ("Trial Court"), and explained that the Resolution and the threshold set forth therein applies to "all types of properties." [R. 10a-11a]. Consistent with the Resolution, Ms. Schlosman reiterated that the District does not consider the property type or sub-type when deciding what assessment appeals to initiate, explaining that, in recent years, the District had filed appeals for residential, commercial, industrial, and farm properties. [R. 12a-13a].

The monetary threshold used in the Resolution factors in the economic realities of the costs incurred in pursuing assessment appeals. Ms. Schlosman explained that $150,000 yields approximately $3,900 worth of real estate revenue to the District. [R. 15a]. The District considers the costs of filing the appeals as well as the legal fees and appraisal costs, which "can be substantial." [R. 15a-16a].

2. A Taxing Body Lacks Legal Authority to Conduct Discovery Prior to Initiating an Assessment Appeal.

A taxing body, such as a school district, is limited to publicly available information when attempting to discern a property's value; taxing bodies have no authority to enter a taxpayer's premises or to demand the disclosure of financial records in order to assess whether a property is properly assessed. [R. 23a].

Attorney John Miravich, Solicitor for the District, testified before the Trial Court as to the information that is publicly available to a school district when determining whether to initiate an assessment appeal. He explained:

> [A]s a taxing body, you have no ability to do any discovery . . . There's no process . . . that allows [a school district] to get financials, rent rolls, any kind of information that would suggest grounds to file an appeal. . . The only thing we can do is get the information that's made available publicly. And there's no other authority that the school district has to just ask people for information.

[R. 32a]. He further explained that a school district – and the attorney filing an assessment appeal on a school district's behalf – must have a good faith basis for doing so: "[A]s an officer of the court, I can't reasonably feel like I can file an assessment appeal and take a matter to the assessment board for them to make a decision, unless I have some factual basis for that." [R. 27a]. As a result, the District is limited to the STEB reports, which constitute a compilation of information tied to the Recorder of Deeds, and any other public information that may be available, such as internet postings regarding the recently sold property. [R. 27a].

In addition to explaining the limited public information available to a taxing body, Mr. Miravich further reinforced the cost-benefit economic analysis built into the Resolution's monetary threshold:

> [O]ur legal fees, the use of the appraiser, costs of the appeal, all of that process needs to go into place to make sure it gets financially viable for the school district to take the appeal. Otherwise, we're just kind of spinning our wheels and not really gaining anything financially for the school district.

[R. 33a].

Similar to the District's statutory authority to file an assessment appeal before the Assessment Board, property owners have that same statutory authority to appeal the assessments of their own property. 53 Pa. C.S.A. § 8844. Mr. Miravich emphasized during his testimony that the majority of the assessment appeals filed each year are actually filed by *property owners* and not taxing bodies, and a majority of property owners' appeals are based on the property owners' recent purchase of the property: "They just bought the property and they want the current fair market value to be reflected and apply common level ratio to come to their assessed value." [R. 29a].

3. The District's Appeals of the Subject Properties.

GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC (collectively, "Taxpayers") purchased the properties at issue in this appeal (collectively, "Properties") in November of 2017 for a combined sale price of $54,250,000. [Tr. Ct. Op. at p. 3, ¶ 8]. As of July of 2018, the Berks County Assessment Office ("Assessment Office") records provided that one of the

Properties ("Parcel A") had an assessed value of $5,177,000, and the other ("Parcel B") had an assessed value of $5,721,700. [Tr. Ct. Op. at p. 3, ¶ 9].

In August of 2018, the District filed timely appeals of the Properties' assessments, contending that both Properties were significantly underassessed. [Tr. Ct. Op. at p. 3, ¶ 10]. The District filed the appeals because the Properties fell into the guidelines outlined in the Resolution: the Properties had a collective assessment of $10,448,700, 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. [Tr. Ct. Op. at p. 4, ¶ 16].

B. PROCEDURAL HISTORY

Following the District's Appeal, the Assessment Office scheduled a hearing before the Assessment Board. A hearing occurred on September 13, 2018. [Appendix B at p. 4, ¶ 17]. Following the hearing, where Taxpayers had a right to be present in person and to present evidence, by notice dated October 17, 2018, the Assessment 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. [Appendix B at p. 5, ¶ 18].

On November 13, 2018, Taxpayers filed a Petition for Appeal of the Assessment Board's decisions to the Trial Court. [Appendix B at p. 5, ¶ 19]. Unlike the District, the Taxpayers called no fact witnesses, offered no expert

testimony, and presented no documentary evidence to support any claim that the District deliberately and purposefully discriminated against them. In addition, Taxpayers presented no evidence that there was, in fact, a lack of uniformity in the District's assessment appeals process.

Furthermore, Taxpayers offered no evidence to the Trial Court to explain why Taxpayers paid more than three times the Properties' imputed fair market values (based on their pre-appeal assessments) to acquire the Properties; although Taxpayers had an opportunity to present evidence and attempt to explain this significant discrepancy, they elected not to do so.

Following the Trial Court's bench trial on October 24, 2019, on the preliminary, bifurcated issue of whether the District properly initiated the assessment appeals, Judge Lash rendered a Decision and Order on January 14, 2020. Judge Lash held that the District (1) has the statutory authority to initiate assessment appeals for properties believed to be underassessed; (2) followed policies and procedures with regard to initiating tax assessment appeals that are constitutionally and statutorily proper; and (3) properly exercised its authority to initiate assessment appeals for the Properties. [Appendix B at "Order"]. The parties subsequently resolved the issue of the Properties' value, which was approved through an Order signed by Judge Lash on August 18, 2020. [Appendix

C]. On September 17, 2020, Taxpayers filed a Notice of Appeal to the Commonwealth Court. [R. 2a].

Following briefing and argument, on July 8, 2021, the Commonwealth Court affirmed the Trial Court's Order. [Appendix D]. The Commonwealth Court rejected Taxpayers' contention that the use of recent sales price constitutes an improper classification, explaining:

> [Taxpayers] argue[] 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.**

[Appendix D at pp. 19-20] (emphasis added). The Commonwealth Court further explained that the District's method "employs a purely economic approach that is practical for the District yet does not improperly differentiate based on property type." [Appendix D at p. 20].

Thereafter, Taxpayers filed a Petition for Allowance of Appeal. This Court granted in part and denied in part the Petition on two limited issues.

II. SUMMARY OF ARGUMENT

Taken to its logical conclusion, Taxpayers seek to strip taxing bodies of their statutory ability to initiate property assessment appeals, instead reserving this right solely to property owners. In seeking this relief, Taxpayers seek to create greater disunity of taxation by permitting property owners to request reduction of their tax burden with no counter-balancing force of assessment appeals filed by taxing bodies to correct under-assessed properties. Taxpayers, of course, take no issue with property owners initiating appeals based on *their own* property sales price; the objection arises only when a *taxing body* initiates an assessment appeal based on sales price. The detriment and burden of the relief Taxpayers seek will fall on all non-appealing property owners, as well as the municipalities and school districts relying on tax revenue to provide vital public services.

Taxpayers improperly assert that the District's practice of utilizing an economic threshold to identify underassessed properties – which threshold compares sales price to current assessment -- violates constitutional provisions requiring uniformity and equal protection. Taxpayers contend that the use of sales price creates an improper subclass of properties and cannot be the metric the District uses to identify assessment appeals to initiate. Taxpayers ignore that sales

price is a criteria that applies universally to all property types, and is the best, most objective evidence a taxing body can rely upon when identifying underassessed parcels. Taxpayers also ignore the fact that a taxing body such as a school district has no legal right to demand access to a property or request financial records available to property owners to determine a property's value.

Taxpayers have produced no evidence to suggest that the District targeted any class or type of property. The undisputed evidence --- to which Taxpayers stipulated at the time of trial – is to the contrary: neither the Resolution nor the practice of the District takes into account the property type or subtype to determine which assessment appeals to initiate. Taxpayers have likewise offered no evidence that in fact the Properties were subject to any uniformity violation. As a result, Taxpayers cannot meet their burden of demonstrating deliberate, purposeful discrimination.

III. ARGUMENT

It is undisputed that the District's process of determining which assessment appeals to initiate never takes into consideration the property type or sub-type. [R. 12a-13a]. Instead, the District uses the limited publicly available information indicative of the current fair market value of a property -- the sales price agreed upon between a buyer and seller -- and compares that to the property's assessed value to determine if a property is underassessed. [R. 10a-11a]. The District's

monetary threshold takes into account the economic realities of the costs associated with pursuing assessment appeals, while conveniently using criteria that applies universally to any type of property: sales price. [R. 16a; 33a]. The use of sales price could not more perfectly satisfy the requirement of uniformity and, in practice, the District has appealed the assessments on all types of properties in using this monetary threshold. [R. 12a-13a]. Pennsylvania courts, including this Court, have consistently held that the use of a monetary threshold, as long as it does not target particularly types of property, is constitutionally acceptable and rationally related to the purpose of judiciously using a school district's economic resources. See, e.g., Weissenberger v. Chester Cty. Bd. of Assess. Appeals, 62 A.3d 501, 505 (Pa. Commw. Ct. 2013); Valley Forge Towers N, LP v. Upper Merion Area School Dist., 163 A.3d 962 (Pa. 2017).

A. Taxpayers Failed to Present Any Evidence that the Properties Were Not Treated Uniformly.

Taxpayers failed to develop any evidentiary record at the time of trial and attempt to flip the uniformity analysis on its head, requiring the *District* to prove that it treated the Properties uniformly. However, in order to sustain a burden of proof for lack of uniformity, it is *Taxpayers* who must demonstrate that a lower ratio of assessment has been applied to similar properties. In re Luzerne Cty. Assess., 539 A.2d 61, 64 (Pa. Commw. Ct. 1988). Acceptable evidence could have

included comparable sales or values of similar properties in the district. Id. Taxpayers did not present this evidence, and without such evidence, Taxpayers cannot prove a uniformity violation.

In the recent decision of School Dist. of Upper Dublin v. Montgomery Cty. Bd. of Assess. Appeals, 2021 WL 3009800 (Pa. Commw. Ct. July 16, 2021) (unreported), the Commonwealth Court affirmed a school district's use of a monetary threshold when determining which assessment appeals to pursue. (A copy of the Upper Dublin decision is attached hereto as Appendix "G.") The Court observed that the mere fact that the monetary threshold, "in most cases . . . will include more commercial than residential properties, such a result is not a certainty, **and [the property owner] did not establish otherwise or otherwise demonstrate that the [school district's] policy was violative of the standard set forth in *Valley Forge*.**" Id. at *10 (emphasis added). The Commonwealth Court noted at length the school district's position that the owner never introduced evidence of a single residential property that met the monetary threshold but was not appealed, or that the school district's procedure was not applied in a uniform manner. Id. at *7.

Thus, the burden of proof was on the Taxpayers, and the Taxpayers failed here to elicit the necessary evidence regarding the Properties. Taxpayers offered none of the types of evidence suggested by Upper Dublin or Luzerne Cty.; indeed,

Taxpayers offered no evidence at all for the Trial Court's consideration. As a result, Taxpayers' Petition for Allowance of Appeal should be dismissed for Taxpayers' failure to satisfy their burden of proof. See Kennett Consolidated School Dist. v. Chester Cty. Bd. of Assess. Appeals, 228 A.3d 29, 31 (Pa. Commw. Ct. 2020) appeal dismissed as improvidently granted, 259 A.3d 29 (Pa. 2021).

B. The District Properly Exercised Its Statutory Authority to Initiate Assessment Appeals.

In initiating assessment appeals of the Properties, among others, the District acted well within its statutory authority.

Under Pennsylvania law, taxing authorities, such as school districts, have clear statutory authority to appeal assessments. 53 Pa. C.S.A. § 8855. The Consolidated County Assessment Law explicitly and unambiguously permits taxing authorities to initiate appeals: "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." Id.

The statutory authority of a school district to initiate tax assessment appeals has been affirmed by Pennsylvania courts time and time again. See, e.g., In re App. of Springfield School Dist., 879 A.2d 335, 341 (Pa. Commw. Ct. 2005)

("Springfield I") (observing that the Consolidated County Assessment Law "contains no limits on the process by which school districts decide to appeal"); Vees v. Carbon Cty. Bd. of Assess. Appeals, 867 A.2d 742, 749 (Pa. 2005) (noting the statutory appeal mechanism is "uniformly available to all interested parties"); Kennett Consolidated, 228 A.3d at 31 (noting a school district's authority to file an assessment appeal "by grant of statutory authority").

The District's appeals of the Properties were taken pursuant to the explicit statutory provision. Taxpayers have never contended that this section of the Consolidated County Assessment Law violates any constitutional provision. Issues cannot be raised for the first time on appeal; they are waived. Trigg v. Children's Hosp. of Pittsburgh of UPMC, 229 A.3d 260, 269 (Pa. 2020); Pa. R.A.P. 302(a).

C. The District's Assessment Appeal Process Actually *Increases* Uniformity Rather Than Reduces It As Claimed by Taxpayers.

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 the general laws." Pa. Const., Art VIII, § 1. Although constitutional limitations exist with regard to the use of the assessment appeals process, a taxpayer challenging uniformity of taxation "must demonstrate deliberate, purposeful discrimination" in order to establish a violation

of constitutional safeguards. Vees, 867 A.2d at 746. Additionally, a taxpayer contending that it has been subject to unequal taxation must show some form of classification that is "unreasonable and not rationally related to any legitimate state purpose." Weissenberger, 62 A.3d at 505.

While Taxpayers contend that the District's appeals violate the uniformity requirement of the Pennsylvania Constitution, in fact, the District's appeal has the opposite effect: increasing uniformity of taxation. Pennsylvania courts have recognized that the exercise of appeal rights by both school districts and property owners ensures that uniformity is maintained, rather than reduced. See Millcreek Twp. School Dist. v. Erie Cty. Bd. of Assess. App., 737 A.2d 335, 339 (Pa. Commw. Ct. 1999) ("Exercise of appeal rights by both the [school district] and the property owner will ensure that the uniformity required by our state constitution is maintained.") For this reason, Pennsylvania courts have repeatedly and emphatically reiterated a school district's statutory authority to initiate assessment appeals. See, e.g., Millcreek, Vees, Springfield I.

A failure of taxing bodies to initiate assessment appeals would have the result of *increasing the lack of uniformity*; the corrections or adjustments to properties' assessments would become one-sided, only ever decreasing in value, because taxpayers will never initiate appeals to increase their tax burden. Thus, the District's exercise of its authority to initiate assessment appeals balances out, at

least in part, the disproportionately higher number of assessment appeals initiated every year by taxpayers throughout the District, often immediately after their purchase of a property. [R. 26a-27a].

Although the system is not perfect, the constitution does not require perfection, a fact long recognized by this Court. See, e.g., Com. v. Delaware Div. Canal Co., 16 A. 584, 588 (Pa. 1889) ("Absolute equality is of course unattainable; a mere approximative equality is all that can reasonably be expected."); Clifton v. Allegheny Cty., 969 A.2d 1197, 1212 (Pa. 2009) (noting that taxation "is not a matter of exact science; hence absolute equality and perfect uniformity are not required to satisfy the constitutional uniformity requirement. Some practical inequalities are obviously anticipated . . .").

Taxpayers lament in footnote 10 of their Brief that different taxing bodies could set different thresholds to determine which assessment appeals to initiate, a process that, Taxpayers contend, "introduces another element of disuniformity." Taxpayers presumably also therefore object to the fact that each of the eighteen school districts and sixty-four municipalities in Berks County set their own tax millage, that income tax burdens vary depending on income amount and income level, and that sales transfer tax varies depending on the value of the property sold. Stated otherwise, Taxpayers' argument, taken to its logical conclusion, contends that virtually all taxes imposed violate the requirement of uniformity.

D. Pennsylvania Courts Have Consistently Permitted Taxing Bodies to Use Monetary Thresholds to Determine which Assessment Appeals to Initiate.

Pennsylvania courts (including this Court) have consistently approved of a taxing body's consideration of economic realities when deciding how to exercise their statutory authority to file an assessment appeal.

Monetary thresholds and criteria that attempt to strike a balance between appeal costs and tax revenue is rationally based and non-violative of the requirement of uniformity in taxation. As noted by the Commonwealth Court: "[I]t is easy to envision a rational basis for [a school district] taking [ ] appeals: sufficient increased revenue to justify the costs of appeals. **Judicious use of resources to legally increase revenue is a legitimate governmental purpose.**" Weissenberger, 62 A.3d at 506 (emphasis added). Canvassing Pennsylvania assessment appeal case law, Weissenberger explained: "[A]dopting a methodology that narrows the class of properties evaluated for appeal based on considerations such as financial and economic thresholds or by classifications of property do not as a matter of law demonstrate deliberate, purposeful discrimination." Id. at 508-09.

Pennsylvania case law is clear that the mere exercise of a school district's assessment appeal authority does not offend the constitutional requirement of uniformity, as noted in this Court's often-mischaracterized decision of Valley

Forge Towers, 163 A.3d 962. In Valley Forge Towers, a taxpayer filed a declaratory judgment action challenging a school district's assessment appeal process and the school district responded by filing preliminary objections. Id. at 966-67. The trial court sustained the preliminary objections, and the Commonwealth Court affirmed the trial court's decision. Id. at 967-68. On appeal, this Court reversed and remanded, reasoning that in the procedural context of preliminary objections, the trial court should have accepted the factual allegations that the school district had initiated appeals only of apartment complexes. Id. at 980. In that procedural context, this Court simply permitted the taxpayer an opportunity to more closely examine the school district's process. Id. at 978.

In rendering its ruling in Valley Forge Towers, the Commonwealth Court specifically observed that the Consolidated County Assessment Law gives "taxing districts the same right as taxpayers [ ] to pursue administrative appeals." Id. at 966. Similarly, and consistent with other appellate case law, Pennsylvania courts have instructed, "[a]s a matter of law, [a school district's] use of the statutory appeal mechanism available uniformly to all interested parties does not amount to deliberate, purposeful discrimination." Vees, 867 A.2d at 749; see also Springfield I, 879 A.2d at 341 ("It is not discrimination to appeal an incorrect assessment.").

Additionally, in Valley Forge Towers, this Court took pains to stress that it did not disapprove of the use of a monetary threshold. 163 A.3d 962. As noted above, the trial court had dismissed the taxpayer's declaratory judgment action on preliminary objections. On appeal, the taxpayer alleged in Valley Forge Towers that the taxing body had a policy of only appealing the assessments of apartment complexes -- a certain subtype of commercial property -- and this Court stated such a policy would violate the uniformity clause *if* established by the evidence at the trial court level. Id. at 979. However, this Court also specifically reasoned that a school district has the statutory authority to file assessment appeals, and that a school district could use monetary criteria to determine which assessment appeals to initiate: "**[N]othing in this opinion should be construed as suggesting that the use of a monetary threshold [ ] 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 the owner**." Id. 163 A.3d at 979 (emphasis added).

The Valley Forge Towers decision specifically referenced with approval the monetary threshold used in In re App. of Springfield School Dist., 101 A.3d 835 (Pa. Commw. Ct. 2014) ("Springfield II"), whereby the school district only appealed properties that had sold by at least $500,000 more than its implied fair market value (calculated as the assessed value divided by the common level ratio).

See Valley Forge Towers, 163 A.3d at 979, n. 19. This Court explained that it did not disagree with the result reached in Springfield II, stating that the Springfield II school district had no "scheme involving disparate treatment of property sub-classifications drawn according to property type or the status of its owner as a resident or non-resident of the taxing district." Id. at 975, n. 13.

Consistent with the afore-mentioned case law, in the case at bar, Judge Lash observed that 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 [sic] sensible." [Appendix B at p. 14].

No Pennsylvania appellate court has ever ruled that the use of an economic threshold, including a threshold based on a sales price, violates the Uniformity Clause. In fact, following the Valley Forge Towers decision, several decisions issued by the Commonwealth Court have reaffirmed a school district's use of monetary thresholds to determine which appeals to initiate, relying on Valley Forge.

For example, following Valley Forge Towers, the Commonwealth Court affirmed a trial court's holding that the assessment appeal criteria undertaken by the East Stroudsburg Area School District in the decision of East Stroudsburg Area School Dist. v. Meadow Lake Plaza, LLC, 2019 WL 5250831 (Pa. Commw. Ct. Oct. 17, 2019) (unreported). (A copy of the East Stroudsburg decision is attached

hereto as Appendix "H.") Therein, the Commonwealth Court held that Valley Forge Towers did not preclude the "application of a reasonable monetary threshold for assessment appeals," and further stated: "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 be fiscally irresponsible." [Appendix H at *5].

Likewise, in Martel v. Allegheny Cty., 2018 WL 10602105 (Allegheny Cty. Ct. of Com. Pleas, March 29, 2018), aff'd on other grounds, 216 A.3d 1165 (Pa. Commw. Ct. 2019), the Allegheny County Court of Common Pleas held that taxing bodies continue to have the authority after Valley Forge Towers to both file assessment appeals and to base those appeals on evidence of recent sales. (A copy of this decision is attached hereto and marked as Appendix "I.") The Martel decision explained that using recent sale price to determine underassessed properties is permissible and also provides readily available evidence for a taxing body to establish the properties that are underassessed:

> In this case, **the taxing bodies' decision to appeal only those properties that are recently sold cannot be properly described as, in any way, improperly motivated or targeted.** Although [Taxpayers] may contend that every not-recently-sold property within the County is under-assessed (at least in comparison to the recently-sold property), evidence of this insinuated fact is not always as readily available. On the other hand, **evidence that any individual recently sold property is**

> **under-assessed in the light of the recent sale price of that precise property for substantially more than its assessed value is always readily available.** The taxing bodies are simply taking appeals where there exists readily available evidence to prove their case. **The taxing bodies are not unfairly focusing on, or targeting, a particular class or type of property owner. Rather, they are doing what most law students are trained to do in law school. The [taxing bodies'] lawyers are advancing arguments where the evidence supports their claims and not advancing arguments where the evidence is quite arguably insufficient to support an argument or claim.**

[Appendix I at p. 23] (emphasis added). The Martel decision further observed that the "[taxing bodies'] alleged conduct . . . appears to be, at its worst, no more than the utilization of precisely the type of monetary threshold or 'other selection criteria' sanctioned by [Valley Forge Towers]." Id.

The Commonwealth Court has observed that where the record established that a school district "intentionally disregards the type of property when deciding what property assessments to appeal, its conduct is inherently not deliberate." See Kennett Consolidated School Dist., 228 A.3d at 37. The Commonwealth Court explained:

> [Valley Forge Towers] makes it abundantly clear that there is a balance to be struck between a school district's ability to appeal an assessment and the Uniformity Clause. Thus, a school district's policy that attempts to be fiscally responsible by only appealing assessments that would generate enough revenue to justify the cost of the appeal does not violate the Uniformity Clause.

Id. This would be true even if all appealed properties fall within only one class of property type, such as commercial properties. Id. at 39 ("The mere fact that all appealed properties were commercial does not *per se* create a violation of the Uniformity Clause.")

The Kennett Consolidated decision also reiterates the Commonwealth Court's prior decision in East Stroudsburg [see Appendix H], stating:

> [M]onetary thresholds do not violate the Uniformity Clause . . . Here [the school district] was using a monetary threshold only for the purpose of making prudent fiscal determinations, and *not* for the purpose of discriminating against sub-classes of properties. Because [the school district] deliberately ignored the property type and focused only on its fiscal considerations, [the school district] did not violate the Uniformity Clause.

Id. at 41.

In summary, no statute or case law prohibits a school district from using a property's sale price, as compared to its assessed value, when considering which assessment appeals to initiate.

Here, in determining which assessment appeals to initiate, the District did not (and does not) consider the properties' types or subtypes. [R. 37a-39a]. By using sale price, which applies universally to all types of properties, since all properties are capable of sale, the District ensures compliance with regard to uniformity. Indeed, property owners throughout the District regularly appeal their

properties' assessed values, contending that they bought the parcel for significantly less than the assessment suggests it is worth, and arguing that the assessment should be reduced as a result. [R. 29a-30a]. Permitting property owners to file these appeals and make this argument, but forbidding taxing bodies from doing so, eliminates an important check and balance to ensuring uniformity in taxation. See, e.g., Millcreek, 737 A.2d at 339.

Furthermore, the sales price of a property is some of the only publicly available information a school district can use to determine whether a property is underassessed. As noted by Judge Lash, a school district "is without data on fair market value for unsold property" and does not "have access to the property to determine the condition of its utility . . . or income and expense data." [Appendix B at p. 14]. Taxpayers here seek to require the District to appeal all properties or none – either attempt to engage in a cost and time prohibitive process of appraising all properties within its bounds (which could not be done, anyway, given the District's inability to compel access to financial records or physical premises), or appeal none at all. As this Court has observed, attempting to evaluate the assessment-to-value ratio of every parcel located within a taxing district is practically impossible. See Downingtown Area School Dist. v. Chester Cty. Bd. of Assess. Appeals, 913 A.2d 194, 199 (Pa. 2006).

E. <u>**The Amicus Brief of the National Association of Property Tax Attorneys Incorrectly Characterizes the District's Appeal Process as a "Welcome Stranger Policy."**</u>

The amicus brief of the National Association of Property Tax Attorneys, <u>et al.</u>, incorrectly characterizes the District's appeal process as a "Welcome Stranger" policy and erroneously cites to <u>Allegheny Pittsburgh Coal Co. v. Cty. Comm'n of Webster Cty, WV</u>, 488 U.S. 336 (1989) as support for this contention. Contrary to this assertion, however, <u>Allegheny</u> is completely distinguishable: <u>Allegheny</u> did not involve an assessment appeal initiated by a *taxing body*, but instead, addressed a valuation placed on property by the *county assessor*. <u>Id.</u> at 338.

Pennsylvania courts have long recognized the key difference between the roles of a *taxing body* on the one hand (the entity that can initiate an assessment appeal) and a *county board of assessment appeals* on the other hand (the entity that rules on such appeals) with regard to the assessment appeal process. For example, in <u>Greenwich Twp. v. Murtagh</u>, 659 A.2d 1083 (Pa. Commw. Ct. 1995), a group of taxpayers who had recently purchased real estate filed a lawsuit against both Berks County and the County's Board of Assessment Appeals, alleging that they were subject to a constitutionally infirm "Welcome Stranger" policy where their recently-purchased properties were reassessed based on the sale price without the filing of an assessment appeal by a taxing body. <u>Id.</u> at 1085. The taxpayers asserted that this "Welcome Stranger" policy of reassessing every property that

sold violated their equal protection rights. Id. Thereafter, the County and Board of Assessment Appeals filed preliminary objections and asserted that the local governments levying the taxes must be joined as indispensable parties. Id. at 1086. The trial court agreed, but on appeal, the Commonwealth Court reversed.

The Commonwealth Court distinguished the role of local boards of assessment appeals from taxing bodies, noting that it is the boards of assessment appeals, and not the taxing bodies, who are "vested with the statutory authority to make and have supervision of the making of annual assessments of property made subject to assessment for taxation." Id. at 1088. Acknowledging that taxing bodies have the authority to challenge assessments through the assessment appeals process, "**it is the Board and not the Local Governments, which has the final determination**, subject to further court appeal, **as to the value of any assessment of real property**." Id. at 1089 (emphasis added). As a result, the Commonwealth Court held that local governments were not proper parties to the lawsuit. Id. at 1091. Although the local governments had a mechanism to challenge properties' assessments, they ultimately did not have final decision-making powers.

The "Welcome Stranger" argument is often used interchangeable with allegations of improper "spot assessments." However, as the Pennsylvania legislature and Pennsylvania courts have recognized, a board of assessment appeals' decision on an appeal initiated by a taxing body does not constitute an

impermissible "spot assessment." In fact, it is for this very reason that the statutory definition of "spot assessment" specifically states: "The term **does not include board ruling on an appeal**." See 53 Pa. C.S.A. § 8802 at definition of "spot assessment" (emphasis added). It is only if a board of assessment appeals initiates property reassessments unprompted by an appeal, as occurred in Allegheny and as alleged to have occurred in Greenwich, that the reassessment becomes constitutionally problematic. As succinctly stated by Judge Lash, the Trial Court judge, a school district "**cannot spot reassess because it is not an assessor.**" [Appendix B at p. 8].

The argument asserted by amicus was summarily rejected in Weissenberger v. Chester Cty. Bd. of Assess. Appeals, which aptly observed that a school district "is expressly authorized to initiate assessment appeals, **and it is not an entity clothed with the power to revise assessments or assessment ratios, such that lodging an appeal constitutes an impermissible spot assessment.**" 62 A.3d 501, 508 (Pa. Commw. Ct. 2013) (emphasis added).

Here, the District has no authority to assess property. Instead, taxing bodies and property owners are both equally able to initiate assessment appeals to request the Assessment Board reassess a property's value. Both parties have the right to present evidence. When making a decision on an assessment appeal, the Assessment Board can grant an appeal entirely, deny it entirely, or assign any

assessment value the Assessment Board deems proper. Both the legislature and the courts have recognized that this process is not a "spot reassessment," nor is it a "Welcome Stranger" policy. See Greenwich; Allegheny.

F. Taxpayers' Incorrectly Rely on Reassessment Cases.

Taxpayers incorrectly cite to cases involving *reassessment*, and not assessment appeals initiated by a taxing body. For example, City of Lancaster v. County of Lancaster, 599 A.2d 289 (Pa. Cmmw. Ct. 1991) and Clifton, 969 A.2d 1197 (Pa. 2009) both involve inconsistent assessment processes imposed on properties *by the county*. Neither case involves an assessment appeal initiated by a taxing body. See, e.g., City of Lancaster, 599 A.2d at 299 (holding that the **county's** practice of "singling out" certain taxing districts and "utilizing a different method of assessment on the properties in those districts" violated the uniformity provision of the Pennsylvania constitution).

Similarly, in City of Harrisburg v. Dauphin Cty. Bd. of Assess. Appeals, 677 A.2d 350, 352 (Pa. Commw. Ct. 1996), a taxpayer challenged the **county assessor's** practice of reassessing only remodeled or rehabilitated properties, and only such properties as were located in the City of Harrisburg, but no other municipality within the county. Id. at 352. The Commonwealth Court affirmed the trial court's holding that the **county assessor's** selective reassessment process

was constitutionally infirm. Id. at 355. As with City of Lancaster and Clifton, City of Harrisburg does not involve an assessment appeal initiated by a taxing body.

As noted supra, the District has no authority to assess property, and has never asserted otherwise. The District's participation in the assessment appeal process is completely distinguishable from the reassessment process described in City of Lancaster, Clifton, and City of Harrisburg.

G. Other Cases Cited by Taxpayers Are Inapplicable.

Seemingly aware that they do not have pertinent case law on point that involves challenges to assessments raised by taxing bodies, Taxpayers cite to decisions having little bearing on the issues before this Court, and which do not change the result.

For example, Nextel Communications of the Mid-Atlantic, Inc. v. Commw. of Pa., Dept. of Revenue, 171 A.3d 682 (Pa. 2017) discusses the unconstitutionality of laws which *wholly exempt* some taxpayers in a class but not others. Id. at 697. Here, however, the District has never taken action to wholly exempt any property or portion of property from real estate taxation. Nextel is not on point.

Similarly, Mt. Airy #1, LLC v. Pa. Dept. of Revenue, 154 A.3d 268 (Pa. 2016) is factually and legally distinguishable from the matter at bar. Mt. Airy addressed a **non-uniform millage rate**, and ultimately the Court held that a

"variable rate tax" was unconstitutional. Mt. Airy, and the other cases upon which Mt. Airy relies, discuss tax *rates* and not tax *bases* (i.e., assessments). Here, there is no evidence to suggest – because such evidence does not exist – that the District taxes different property owners at different, non-uniform millage rates. Instead, an identical uniform millage rate is applied to all properties within the District, without regard to the property type or sub-type or the property value. The uniformity of the rate – the issue raised in Taxpayers' Brief – is simply not at issue here or in any tax assessment appeal.

Taxpayers also cite to cases that do not deal with property taxes, such as Kelley v. Kalodner, 181 A. 598 (Pa. 1935) (involving **income tax**) and Saulsbury v. Bethlehem Steel Co., 196 A.2d 664 (Pa. 1964) (involving an **occupational privilege tax**). These cases are simply not on point, and do not militate in favor of reversing the underlying opinions rendered in the case at bar.

H. Taxpayers Seek to Nullify Taxing Bodies' Authority to File Assessment Appeals and Undermine Public Reliance on Established Jurisprudence.

Stripped down to its core, Taxpayers' argument, if applied, would mean that only property owners, and never taxing bodies, could file assessment appeals. This is because any time a taxing body appealed some, but not all, assessments, it would be creating an inappropriate "class." This is simply not the law.

As discussed supra, the District's appeals of the Properties were taken pursuant to the explicitly clear statutory authority granted by 53 Pa. C.S.A. § 8855. Taxpayers' have never contended that this statutory language is unconstitutional and rendering a decision in Taxpayers' favor would require invalidating that provision. However, Taxpayers never raised this argument, and has been waived. See Trigg, 229 A.3d at 269; Pa. R.A.P. 302(a).

Additionally, although Taxpayers' Petition suggests that the Commonwealth Court's decision is a shocking departure from this Court's jurisprudence, the setting of a monetary threshold, implemented without regard to property type, is exactly the selection criteria approved in Valley Forge Towers. To reach the opposite conclusion and invalidate Valley Forge Towers requires "special justification" under the longstanding principle of *stare decisis*. See Com. v. Alexander, 243 A.3d 177, 195-96 (Pa. 2020). The doctrine of s*tare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." Id. (Internal citations omitted.) For this reason, reversing a decision requires "special justification, over and above the belief that the precedent was wrongly decided." Id.

Here, Taxpayers have offered no "special justification" for invalidating an assessment appeal process whereby taxing bodies apply a monetary threshold

without regard to property type to determine which appeals to initiate, specifically approved by Valley Forge Towers. This process, utilized by the District and other taxing authorities throughout the Commonwealth of Pennsylvania, was specifically developed in reliance upon, and to ensure compliance with, this Court's direction of Valley Forge Towers. Reaching the opposite conclusion only a few years later would undermine the actual and perceived integrity of the legal process. Alexander.

IV. CONCLUSION

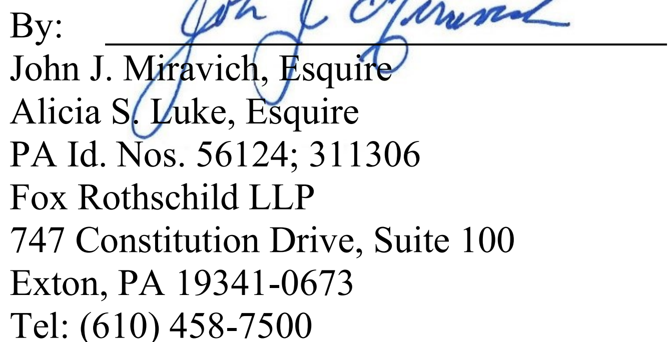
For all of the reasons discussed above, the Wilson School District respectfully requests that this Court affirm the January 14, 2020 and August 18, 2020 Orders of the Court of Common Pleas of Berks County and July 8, 2021 Order of the Commonwealth Court of Pennsylvania.

Respectfully submitted,

FOX ROTHSCHILD LLP

Date: May 13, 2022

By:



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CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

The undersigned certifies 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.

The undersigned certifies that this filing does not contain confidential information.

FOX ROTHSCHILD LLP

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

The undersigned hereby certifies that the foregoing Brief of Appellee, Wilson School District complies with the word count limitations set forth in Pa. R.A.P. 2135(a)(1) and contains 6,955 words.

FOX ROTHSCHILD LLP

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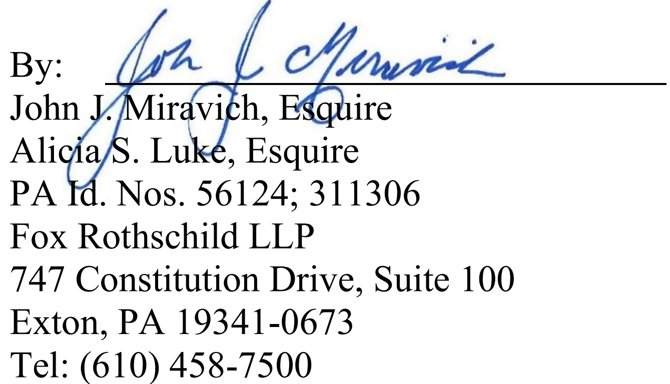
By: 

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APPENDIX
G

260 A.3d 1099 (Table)
Unpublished Disposition
See Pa. Commonwealth Court Internal
Operating Procedures, Sec. 414 before citing.
OPINION NOT REPORTED
Commonwealth Court of Pennsylvania.

SCHOOL DISTRICT OF UPPER DUBLIN
v.
MONTGOMERY COUNTY BOARD OF ASSESSMENT APPEALS, Montgomery County, Upper Dublin Township, School District of Upper Dublin
Appeal of: General Auto Outlet

No. 1520 C.D. 2019
|
Argued: June 7, 2021
|
Filed: July 16, 2021

BEFORE: HONORABLE P. KEVIN BROBSON, President Judge, HONORABLE J. ANDREW CROMPTON, Judge (P.), HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

Opinion

MEMORANDUM OPINION BY JUDGE CROMPTON

***1** Before this Court is the appeal of General Auto Outlet (Owner) of the September 16, 2019 order of the Montgomery County Court of Common Pleas (trial court) denying its Motion to Dismiss Tax Appeal and the October 1, 2019 final order of the trial court establishing the value of Owner's property (Subject Property) for tax years 2018 through 2020. [1]

[1] The School District of Upper Dublin (School District) contends that this Court does not have jurisdiction over the appeal of the trial court's September 16, 2019 order because Owner stated it was appealing the order entered on October 1, 2019. However, an appeal of a final order permits a challenge to any interlocutory order, and the interlocutory order does not need to be identified in the Notice of Appeal. *See* 20 Pa. Appellate Practice, § 341:3.1 (2020-2021).

I. Background and Procedural History

The present matter initially came before the trial court from the School District of Upper Dublin's (School District) reverse appeal from a decision of the Montgomery County Board of Assessment Appeals (Board) in regard to the tax assessment of the Subject Property. The Subject Property is a shopping center consisting of 9.7 acres of land and 90,691 square feet of retail space in 2 buildings located at 3610 Welsh Road in Upper Dublin Township (Township) in Montgomery County, Pennsylvania. The principal shopping center building totals 88,087 square feet and is leased to multiple retail tenants of varying sizes. Ashley Furniture is the largest tenant, leasing approximately 40% of the total leasable space. This space was previously leased to a supermarket and a drug store. The remainder of the shopping center is leased to 11 small- and mid-sized retail tenants including restaurants and stores that sell clothing, shoes, mattresses, *etc*. PNC Bank maintains a branch in a separate freestanding building totaling 2,604 square feet.

On July 29, 2013, the School District appealed to the Board to challenge the $4,905,860 assessment of the Subject Property. On September 26, 2013, a hearing was held before the Board, and on October 30, 2013, the Board determined that the assessment was proper.

On November 25, 2013, the School District filed an appeal with the trial court, and both Owner and the Township filed Notices of Intervention as of right in the matter. In June 2017, the parties agreed to a settlement, but on July 5, 2017, our Supreme Court issued its opinion in *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District*, 163 A.3d 962 (Pa. 2017). [2]

[2] In *Valley Forge*, our Supreme Court held that taxpayers could invoke the equity jurisdiction of a court of common pleas to seek declaratory and injunctive relief based on the theory that the school district violated the Uniformity Clause of the Pennsylvania Constitution, Pa. Const. art. 8, § 1, and that the Uniformity Clause did not permit the school district to selectively appeal assessments of commercial properties while choosing not to appeal assessments of other types of properties, such as single-family residential homes.

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***2** On July 18, 2017, Owner filed a petition to declare the settlement null and void and to dismiss the School District's appeal based on the *Valley Forge* decision. On August 7, 2017, the School District filed a motion to enforce the settlement agreement. After a hearing, the trial court issued an order, on November 9, 2017, granting Owner's petition to the extent it sought a declaration that the settlement agreement was null and void. On that same date, the trial court filed a separate order deferring the issue of whether the School District's appeal should be dismissed based on *Valley Forge*. The parties agreed to an interim resolution of the *Valley Forge* issue, which was addressed in a trial court order dated February 15, 2018. This order provided that the School District's appeal for tax years 2011 through 2017, and Owner's petition to dismiss the appeal, were both withdrawn. In addition, the order provided that Owner preserved its argument that the appeal for tax year 2018 should be dismissed based on the *Valley Forge* decision and that the issue could be raised any time prior to, or at, trial for tax year 2018. The order further provided that the parties would exchange certain documentation. Supplemental Reproduced Record (S.R.R.) at 9b-10b.

On July 11, 2019, Owner filed a motion to dismiss, renewing its argument that the appeal should be dismissed, per *Valley Forge*. At a July 12, 2019 pretrial conference, the trial court stated that the *Valley Forge* issue would be heard during trial and would be determined as part of the trial court's ruling on the overall appeal. Thus, when the trial commenced on September 16, 2019, the trial court issued an order denying Owner's motion to dismiss without prejudice.

On September 16, 2019, the trial court heard all the evidence from both parties on the *Valley Forge* issue. The parties also presented evidence on the value of the Subject Property. On October 1, 2019, the trial court issued a Memorandum and Order, setting forth findings of fact and conclusions of law and determining the assessed values for the Subject Property for 2018 through 2020. Owner filed a timely Notice of Appeal to this Court on October 18, 2019, and a Concise Statement of Errors Complained of on Appeal on November 1, 2019. Accordingly, the trial court issued an opinion in support of its Memorandum and Order on December 17, 2019.

II. The Trial Court's Opinion

In its opinion, the trial court stated that, on July 17, 2017, less than two weeks after our Supreme Court filed its *Valley Forge* opinion, the School District adopted a procedure for assessment appeals. Per this procedure, the School District would identify and file assessment appeals on industrial, commercial, and residential properties in instances where the appeal would provide a reasonable expectation of an increase in taxes of at least $10,000 annually. The trial court noted that, at the time of trial, the School District had filed a total of eight tax assessment appeals for tax years 2017 and 2018, and of the eight properties at issue, six were classified commercial, one was classified as an apartment, and one was classified as residential, although the residential property encompassed multiple buildings, including eight leased apartment units. Trial Ct. Op., 12/17/19, at 3. Thus, the School District had not filed any tax assessment appeals on residential properties that were wholly occupied by the property owner.

After reviewing the evidence, the trial court determined Owner failed to demonstrate that the School District's appeal of the Subject Property tax assessments, for 2018 through 2020, violated our Supreme Court's holding in *Valley Forge*. The trial court reasoned that the *Valley Forge* Court had expressly opined that its holding did not apply to the use of a neutrally applied "monetary threshold" in selecting properties to be appealed, as was utilized by the School District here. Trial Ct. Op., 12/17/19, at 5 (quoting *Valley Forge*, 163 A.3d at 979). Further, the trial court found no evidence that the School District had implemented the monetary threshold in any sort of discriminatory manner. Trial Ct. Op., 12/17/19, at 26.

In regard to valuation of the Subject Property, the trial court determined:

> ***3** The appraisers agreed that the [Subject] Property was substantially undervalued under its then-current assessment, but they disagreed on the extent of the undervaluation. Michael J. Barth of the Michael J. Barth Company, called by Owner, testified to the following values for the tax years at issue:
>
> 2018: $13,570,000
>
> 2019: $13,900,000
>
> 2020: $13,900,000
>
> Joseph Vizza of Philadelphia Suburban Realty Appraisal Group, testifying for the [School] District, concluded that the [Subject] Property had the following values:
>
> 2018: $19,250,000

2019: $20,200,000

2020: $20,150,000

Despite their differing conclusions, there was much common ground between the two appraisers .... For most of 2018, one of the tenant spaces was vacant, but a new lease for that space was entered in late 2018 or early 2019, resulting in a fully leased shopping center. That vacancy rate at the shopping center has never exceeded 5%. All leases at the [Subject] Property are triple net, *i.e.*, they require tenants to reimburse Owner for their pro rata share of all expenses, including real estate taxes ....

Significantly, there was also broad agreement between the two appraisers on the proper methodology for valuing the [Subject] Property, although with limited but critical differences between them. The appraisers agreed that the best method of valuation for the [Subject] Property was the income capitalization approach. They agreed that the replacement cost approach was not applicable to the [Subject] Property.

The appraisers also agreed that the income capitalization approach involved the following seven steps:

(a) determining the potential gross rental revenue from tenants;

(b) determining a percentage factor for vacancy/collection loss and reducing the gross rental revenue by that factor;

(c) adding the total expense reimbursement revenue from tenants, other than property tax reimbursement;

(d) subtracting the actual operating expenses, other than property tax expense, resulting in the net operating income for the [Subject] Property;

(e) determining a capitalization rate;

(f) adjusting the capitalization rate by adding a tax load factor; and

(g) dividing the net operating income by the adjusted capitalization rate.

Despite their agreement on this methodology, the appraisers differed on how each of these factors should be calculated. Each factor was thus addressed separately by the [trial court].

Trial Ct. Op., 12/17/19, at 5-7.

In regard to gross rental revenue, the trial court stated that the School District's appraiser calculated potential gross rental revenue for each year based on market rental rates, whereas Owner's appraiser calculated this amount using actual rents under the leases. The trial court could not reconcile the different figures, and since the School District had the burden of proof, the trial court accepted the gross rental amounts utilized by Owner's appraiser, *i.e.*, $1,644,702 for 2018, $1,669,702 for 2019, and $1,665,966 for 2020.

As for vacancy/collection loss, the School District's appraiser used a factor of 6%, and Owner's appraiser used a factor of 7.5%. The trial court adopted the factor used by Owner's appraiser, in light of the "likely impact that a substantial increase in taxes, retroactive to 2018, [would] have on the tenants." Trial Ct. Op., 12/17/19, at 8.

The trial court addressed the expense reimbursement and operating expense factors together, noting they are "interrelated." Trial Ct. Op., 12/17/19, at 8. The trial court found that the appraisers' calculations differed in two substantial respects. The School District's appraiser included an administrative charge of 15% in reimbursement income for common area maintenance expenses. Owner's appraiser excluded the 15% charge from reimbursement income because he also excluded corresponding administrative expenses, resulting in a "wash." Trial Ct. Op., 12/17/19, at 9. However, the trial court noted that Owner's appraiser included administrative expenses in his calculation of operating expenses. Thus, the trial court found that the appraiser for the School District more accurately reflected the reimbursement income and operating expenses because his calculation "accurately accounted for the receipt of the 15% administrative fee payable by the tenants." *Id*.

***4** The trial court noted that the appraisers also disagreed on operating expenses relative to a "reserve" figure. *Id*. The School District's appraiser calculated reserves at $0.15 per square foot. Owner's appraiser set the reserves at $0.45 through $0.47 per square foot, increasing one cent per year from 2018 through 2020. The trial court determined that neither figure was fully explained or justified by the appraisers, so the trial court adopted Owner's appraiser's calculations, again in light of the fact that the School District carried the burden of proof.

The trial court explained that the School District's appraiser determined a capitalization rate of 8% based on the theory that the market reflected a base capitalization rate of 7.75%, but that this rate should be increased by 0.25% to 8%, to reflect the above-market rental for the space occupied by PNC Bank. Owner's appraiser determined a capitalization rate of 8.25% "based on a 'band of investment' approach considering both a mortgage constant and an equity dividend." Trial Ct. Op., 12/17/19, at 10. The trial court adopted the School District's appraiser's 8% rate, which it determined most accurately reflected the shopping center market.

The trial court further determined that the most significant difference between the appraisers was in the application of the tax load factor. The trial court acknowledged that the tax load factor calculation for each year begins by multiplying the State Tax Equalization Board ratio by the tax millage rate. The trial court noted that the appraisers used different millage rates but that the differences were not material. The trial court adopted the calculations of the base tax load factor of Owner's appraiser, rounded to the nearest one-hundredth of a percent, *i.e.*, 2.30% for 2018, 2.20% for 2019, and 2.17% for 2020, but added that the real disagreement was over the next step in the calculation process. Owner's appraiser's method was to add the entire tax load factor to the capitalization rate, yielding an adjusted capitalization rate in excess of 10%. The School District's appraiser's method was to multiply the base tax load factor by the vacancy/collection loss percentage and add only the smaller, adjusted tax load factor to the capitalization rate. By using a small percentage of the base tax load factor, the School District's appraiser would increase the capitalization rate by a mere fraction of one percentage point. Trial Ct. Op., 12/17/19, at 10-11.

Owner's appraiser testified that his approach was the generally accepted appraisal practice, that the tax load factor should apply for the entire property being assessed, not just the landlord's share of the taxes, and that he has never seen an appraisal that adjusted the tax load factor as the School District's appraiser did in the instant matter. The trial court noted, however, that Owner's appraiser's testimony was impeached by a prior appraisal report he had prepared for the Subject Property, in which he had utilized the same method employed by the School District's appraiser here. Accordingly, the trial court found the School District's appraiser to be more persuasive, reasoning that the purpose of the income capitalization approach is to value the income stream of the Subject Property to an investor-purchaser, which would reflect only the portion of the taxes to be borne by the landlord, not the entire tax burden on the Subject Property.

With rounding, the trial court determined that under the income capitalization approach, the value of the Subject Property was $18,000,000 in 2018, $18,500,000 in 2019, and $18,500,000 in 2020.

***5** The trial court recounted the testimony of Bruce Goodman, owner of Goodman Properties and the Subject Property.[3] Mr. Goodman testified to the decline of the rental market for brick-and-mortar operations due to demographic changes and the increased use of online shopping. He also testified that losing a supermarket at the shopping center had a negative impact on the value of the Subject Property. The trial court noted that it considered this testimony but that it relied more heavily on the quantitative analysis of the appraisers, who took all of this into account in their respective valuations of the Subject Property. The trial court also noted that Mr. Goodman testified that title to the Subject Property is encumbered by a mortgage, which includes a prepayment penalty that would need to be taken into account in conjunction with any sale of the Subject Property. Owner's appraiser testified that the prepayment penalty would reduce the amount that a hypothetical seller would be willing to accept for the Subject Property. However, the trial court noted that, in his report, Owner's appraiser did not quantify what the reduction in value would be from any such penalty. The trial court expressed its skepticism that Owner's financing arrangements would affect the market value of the Subject Property, but ultimately determined it did not need to make a finding on the issue because Owner had failed to prove a quantifiable adjustment to the value of the Subject Property based on the prepayment penalty.

3 Owner states: "Goodman Properties is an affiliate of [Owner,] and Bruce Goodman is the principal owner of both entities." Owner's Br. at 41.

The trial court added that the parties agreed the proper assessments for the Subject Property are reached by multiplying the fair market value, as determined by the trial court, by the applicable ratio as stipulated by the parties.

The trial court further determined that, for tax year 2018 and thereafter, the School District had applied a monetary threshold consistent with our Supreme Court's decision in *Valley Forge*. Moreover, the trial court found no evidence that the School District had implemented its threshold in a

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discriminatory manner. Thus, there was no violation of the Uniformity Clause of the Pennsylvania Constitution.

As to valuation, the trial court stated that it weighed all the evidence and expressed, in its October 1, 2019 Findings of Fact and Conclusions of Law, as well as in its subsequent December 17, 2019 opinion, the reasons for adopting the opinion of one appraiser over the other. As for the proper tax load factor to be applied, the trial court stated that it used the methodology testified to by the School District's appraiser, whom the trial court found to be more credible. The trial court added that it based its determination of the current market value of the Subject Property on competent, credible, and relevant evidence and, after considering the methodologies and data presented by the expert witnesses and applying the proper formula, ultimately determined the proper assessments for the three years in question were $9,738,000 for 2018, $10,156,500 for 2019, and $9,120,500 for 2020. Owner now appeals the trial court's orders to this Court. [4]

4 This Court's review in a tax assessment appeal is limited to a determination of whether the trial court abused its discretion or committed an error of law, or whether the decision is supported by substantial evidence. *Willow Valley Manor, Inc. v. Lancaster Cnty. Bd. of Assessment Appeals*, 810 A.2d 720 (Pa. Cmwlth. 2002). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Norwegian Twp. v. Schuylkill Cnty. Bd. of Assessment Appeals*, 74 A.3d 1124, 1128 n.3 (Pa. Cmwlth. 2013) (internal citation omitted). In regard to the trial court's dismissal of the matters raised as part of Owner's motion to dismiss, this Court's standard of review also includes an analysis of whether Owner's constitutional rights were violated. *See Macy's, Inc. v. Bd. of Prop. Assessment, Appeals, Rev. of Allegheny Cnty.*, 61 A.3d 361 (Pa. Cmwlth. 2013); *Ray v. Brookville Area Sch. Dist.*, 19 A.3d 29, 31 n.3 (Pa. Cmwlth. 2011).

III. Arguments

A. Owner's Arguments

Owner argues that the trial court's determination to defer its motion to dismiss until trial, rather than to address it separate and apart from the valuation trial, deprived it of an opportunity to engage in meaningful discovery and put it at a disadvantage, improperly placing the burden of proof on Owner, rather than on the School District. Owner contends that the School District did not have a codified written appeals policy until after our Supreme Court filed its decision in *Valley Forge*, and that the School District initiated the present appeal years before its adoption of its policy on appeals. Further, Owner maintains that the School District's policy of appealing only properties underassessed by $600,000, [5] was arbitrary and discriminatory as it essentially eliminated all residential properties from consideration for appeal. Owner's Br. at 15-16, 23. Owner further maintains that the School District did not file any assessment appeals in regard to single-family residential properties and focused its efforts only on commercial properties, noting that at the time of trial, the School District had filed eight tax assessment appeals for tax years 2017 and 2018 and that, of those eight, "six were classified as commercial, one was an apartment complex, and one was as an income-producing rental property." Owner's Br. at 23.

5 Owner relies on the testimony of the School District's former business manager to contend that the threshold of a $10,000 increase in tax assessment could only be reached if a property had increased in fair market value by $600,000 or more. The former business manager also acknowledged during questioning by Owner's counsel that "very few, if any, residential properties would make that cut." Owner's Br. at 28 (citing Reproduced Record (R.R.) at 157a-58a).

***6** Owner argues that the trial court erred by finding the School District had not violated the Uniformity Clause of the Pennsylvania Constitution because the School District's selection process was not consistent with its own policy and was implemented in an "arbitrary and capricious" manner. Owner's Br. at 19. Owner asserts that the School District has historically appealed only assessments of retail and income-producing apartment properties, while not uniformly appealing residential properties, and that the School District's appeals have been focused on properties owned by those residing outside of the School District, which is unconstitutional. Owner argues: "It strains logic to conclude that [our] Supreme Court, when passing upon the merits of a monetary threshold, intended to sanction a formula designed and implemented to subject only commercial properties for appeal." Owner's Br. at 31.

As to valuation of the Subject Property, Owner acknowledges that each party's appraiser prepared documents reflecting the Subject Property was underassessed. However, each presented “dramatically different valuations.” Owner's Br. at 32.

Owner contends that the trial court made valuation judgments that were not supported by the evidence and were made without articulating the reasons for same. Specifically, Owner argues that the trial court engaged in a “pick and choose” approach, making arbitrary determinations as to which appraiser was more credible, and that the trial court's findings lacked clarity and specific credibility determinations. Owner's Br. at 36.

Owner also argues that the trial court erred “by ignoring [Mr.] Goodman's testimony.” Owner's Br. at 41. Relative to this criticism of the trial court, Owner states: “The [trial court], making an independent judgment best left for an expert, found that while individual financing arrangements would affect market value, the effect must be monetarily quantified in order to have probative value.” *Id*. (citing R.R. at 126a-27a).

Owner contends that the trial court also erred by adopting a partially loaded capitalization rate, arguing that the School District's appraiser and the trial court were unable to point to any specific authority that endorsed the School District's approach. “Rather, the support was more of a whimsical assumption that a landlord pays the taxes for vacant space. However, that assumption is not always true .... [T]he [trial court] surmises ... if the [Subject] Property is leased (as opposed to owner occupied) and becomes vacant, [O]wner would have to pay the taxes.” Owner's Br. at 42. Owner argues that “[t]he basic and controlling substantive issue in a real estate assessment appeal is the correctness of the total assessment of the property as a unit.” Owner's Br. at 46. Owner further argues:

> Discounting the capitalization rate for vacancy produces an artificially low capitalization rate and the [trial court's] endorsement of such a practice[ ] was a manifest error of law. The [trial court] provided no specific reason to deviate from generally accepted valuation principles. Accordingly, the [trial court's] calculation of the loaded capitalization rate must be rejected, and [Owner's] loaded capitalization rate must be adopted.

Id.

In addition, Owner maintains that the trial court erred and abused its discretion by failing to consider the effect of higher taxes on vacancy. *Id*. Owner states that “[v]acancy and collection loss is defined as an allowance for reductions in potential gross income attributable to vacancies, tenant turnover, and nonpayment of rent.” Owner's Br. at 47 (citing *The Appraisal of Real Estate* (12 th ed. 2001)). Owner adds: “[l]ogically, if income is reduced by an allowance for vacancy and collection loss, then, under the income approach to value, taxes based on the adjusted income will also be reduced.” *Id*. Citing *In re Johnstown Associates*, 431 A.2d 932, 935 (Pa. 1981), Owner asserts that our Supreme Court has endorsed the concept of considering higher taxes on vacancy and value. *Id*. Owner contends that, because the trial court did not provide any basis to deviate from generally accepted principles of valuation, its calculation of the loaded capitalization rate must be rejected, and Owner's loaded capitalization rate must be adopted. Owner's Br. at 48.

B. The School District's Arguments

***7** The School District argues,[6] initially, that Owner's contention that the trial court erred by dismissing its motion to dismiss without a separate hearing and an opportunity to conduct discovery, as well as its contention that the trial court erred by applying valuation judgments without evidentiary support, are both waived because Owner failed to include either issue in its Concise Statement of Errors Complained of on Appeal Pursuant to Pa. R.A.P. 1925(b).

6 The Township of Upper Dublin, the Montgomery County Board of Assessment Appeals, and Montgomery County each join in the brief filed by the School District.

Further, as to Owner's motion to dismiss, the School District states that Owner filed two such motions; one in August 2017 and one in July 2019, and that the trial court had entered an agreed-upon order, in February 2018, acknowledging Owner was withdrawing its initial motion and that the School District was to provide certain information to Owner. The School

District adds that this same order stated that Owner could renew its motion to dismiss regarding the 2018 tax year "at any time prior to or at trial." School District's Br. at 21. In addition, the School District contends that the trial court's February 2018 order gave any party the right to praecipe the case for trial and to address any discovery disputes, and that Owner never pursued discovery or followed the agreed-upon procedure for addressing discovery disputes. *Id*. at 21-22. Further, the School District states that Owner's counsel failed to object to "the manner in which the case was proceeding" at the September 16, 2019 trial. *Id*. at 22.

As to the matter of determining which properties are selected for tax assessment appeals, the School District notes that its former business manager testified that the School District identifies and files assessment appeals relative to industrial, commercial, and residential properties in instances in which an appeal "[will] provide a reasonable expectation of realizing an annual increase in taxes of $10,000 or more." School District's Br. at 28. This amount is determined based on a "break even" number for the costs the School District will likely incur in bringing the appeal. *Id*. Further, the School District contends that "Owner failed to introduce evidence of a single residential property which met the criteria of [the School District's] [p]rocedure[,] which was not appealed" or "any evidence establishing that the $10,000 threshold was so high that it completely eliminated any residential properties from ever being appealed." School District's Br. at 29. Further, the School District asserts that Owner argues that the School District is "engaging in 'selective appeals' [but never cites] any evidence to support such a conclusion." *Id*.

Additionally, the School District maintains that "the real fault in [ ] Owner's arguments is the assumption that unless assessment appeals of residential properties were taken during the years in question, the policy then must violate *Valley Forge*." School District's Br. at 30. "This assumption is contrary to this Court's holdings and not supported by any language" in *Valley Forge*. *Id*. "This [ ] argument is based on the premise that unless a policy results in appeals of an identical number of commercial and residential properties it should be presumed unlawful." School District's Br. at 32. The School District adds that Owner did not provide any evidence that its procedure was not applied in a uniform manner or that the School District declined to appeal any residential property assessment for which there was a reasonable expectation of realizing an annual tax increase of $10,000 or more. School District's Br. at 11. The School District notes that subsequent to the *Valley Forge* decision, this Court issued decisions approving "the use of financial thresholds and cost-benefit analysis to narrow the number of properties a school district evaluates for appeal." School District's Br. at 26-27 (citing *Kennett Consol. Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 228 A.3d 29, 37-39 (Pa. Cmwlth. 2020)); *Bethlehem Area Sch. Dist. v. Bd. of Revenue Appeals of Northampton Cnty.*, 225 A.3d 212, 219-221 (Pa. Cmwlth. 2020); and *East Stroudsburg Area Sch. Dist. v. Meadow Lakes Plaza* (Pa. Cmwlth., No. 371 C.D. 2019, filed Oct. 17, 2019) 2019 WL 5250831. In fact, the School District emphasizes that, in *East Stroudsburg*, this Court noted:

> ***8** Contrary to Taxpayers' argument, we find nothing in our Supreme Court's analysis in *Valley Forge* 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.

School District's Br. at 27 (quoting *East Stroudsburg*, slip op. at 11, 2019 WL 5250831 at *5).

The School District argues that, to the extent Owner complains the appeal for tax years prior to 2018 were withdrawn but that the appeals for tax years 2018 and beyond were permitted to proceed to trial, the issue is waived because Owner agreed to this procedure and did not raise the issue before the trial court in its Statement of Errors Complained of on Appeal. School District's Br. at 32-33. Further, the School District asserts that "[i]n cases where an appeal is pending before a trial court ... subsequent tax assessments are automatically appealed, have a separate status, and continue to exist notwithstanding dismissal of the original assessment appeal." School District's Br. at 33 (citing *525 Lancaster Ave Apts, L.P. v. Berks Cnty. Bd. of Assessment Appeals*, 111 A.3d 1231, 1235-36 (Pa. Cmwlth. 2015)).

In regard to valuation of the Subject Property, the School District argues that the trial court properly considered and

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reconciled the testimony of the competing experts on the matter in order to determine the fair market value of the Subject Property. Quoting *Cedarbrook Realty, Inc. v. Cheltenham Township*, 611 A.2d 335, 340 (Pa. Cmwlth. 1992), the School District notes "[t]hat this Court has 'acknowledged repeatedly that the valuation of property is not an exact science and that it is the fact[-]finder's role to determine the weight to be accorded an expert's testimony in this area.' " School District's Br. at 34. Further, the School District notes that "the testimony of an expert in an assessment appeal is to be evaluated in the same manner as any other expert witness .... Specifically, the fact-finder may accept all, none or part of an expert's testimony, part of one expert's testimony and part of another's." School District's Br. at 35 (quoting *Green v. Schuylkill Cnty. Bd. of Assessment Appeals*, 730 A.2d 1017, 1021 (Pa. Cmwlth. 1999)).

The School District discounts Owner's reliance on a manual for appraisers, which was not part of the record in the case, to refute Owner's contention that the trial court's decisions on the tax load factor and capitalization rate were not supported by substantial evidence. School District's Br. at 36. The School District asserts that the trial court listened to each appraiser and determined that the approach used by its appraiser in determining the tax loaded capitalization rate was more persuasive. School District's Br. at 37. The School District further asserts that "there is no evidence that the manner in which [ ] Owner's expert calculated the loaded tax rate is the 'generally accepted' method of doing so. The trial court appropriately explained its decision to adopt the approach testified to by the [School] District's expert." School District's Br. at 39-40.

The School District criticizes Owner's contention that the trial court failed to consider Mr. Goodman's testimony, noting that the argument is meritless and that Owner cannot "complain that the trail [sic] court did not assign the weight to Mr. Goodman's general testimony that [Owner] wanted." School District's Br. at 40.

***9** The School District further takes issue with Owner's contention that the trial court incorrectly determined that the effect of higher taxes need not be considered in the valuation process. The School District argues that this misstates the trial court's decision and that the trial court, in fact, did take into account the impact of higher taxes by adopting a vacancy and credit loss rate of 7.5%, even though it was not disputed that the Subject Property has never had a vacancy rate of more than 5%. The School District adds that "[i]t is difficult to image [sic] how the Owner can complain that the trial court adopted the vacancy and credit loss number used by its own expert." School District's Br. at 41-42.

The School District argues that the trial court's findings are each supported by substantial evidence, and the trial court has exclusive province over all matters of credibility and evidentiary weight. School District's Br. at 40 (citing *RAS Dev. Corp. v. Fayette Cnty. Bd. of Assessment Appeals*, 704 A.2d 1130, 1137 (Pa. Cmwlth. 1997)). Thus, the School District contends that this Court should "affirm the decision of the trial court in all respects." School District's Br. at 42.

IV. Discussion

A. Motion to Dismiss and *Valley Forge*

We first address Owner's contentions that the trial court erred by requiring it to litigate its motion to dismiss at the time of trial and that the trial court effectively denied it an opportunity to conduct discovery. In these regards, we see no error. The February 15, 2018 order of the trial court allowed for withdrawal of the tax assessment appeals for tax years 2011-2017, and also ordered that Owner's motion to dismiss for tax year 2018 was withdrawn but that the issues raised therein were preserved and could be raised at any time prior to, or at, trial. S.R.R. at 9b. The order further stated:

> 3. On or before thirty (30) days from the date of this [o]rder, the School District shall forward to [Owner] copies of all tax assessment appeals filed after July 1, 2017 and the result of each such appeal, including but not limited to any and all settlement agreements ....
>
> ...
>
> 5. The parties shall thereafter engage in settlement discussions for a period not to exceed thirty (30) days from the exchange of appraisals. Thereafter, the matter shall be listed for trial upon the filing of a trial praecipe by any party ....
>
> 6. The parties may, by written stipulation, extend the dates in this [o]rder. In the event that any issues arise attendant to this [o]rder, including but not limited to the failure to respond to discovery requests, the parties shall immediately contact this [c]ourt and a conference shall be timely scheduled to address and resolve said matters.

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S.R.R. at 9b-10b.

The foregoing evinces reasonable flexibility and fairness by the trial court in regard to the procedure to be followed in the litigation and its timing, as well as in the provision and exchange of information between the parties. Further, Owner did not raise a contention to these points in its Pa. R.A.P. 1925(b) Concise Statement of Errors Complained of on Appeal. Thus, we reject Owner's assertion that the trial court improperly required it to litigate its motion to dismiss at the time of trial and denied it an opportunity to conduct discovery. In addition, the following exchange from the trial court transcript reveals that Owner did not raise any of these same concerns at trial, when it had a meaningful opportunity to do so:

> The Court: So we have a couple of motions to dispose of. We have [Owner's] motion to dismiss, which we discussed in the pretrial conference we'll handle the *Valley Forge* issue in the course of the hearing today. So that motion will be denied without prejudice.
>
> ***10** And we have [Owner's] motion in limine, which looks to me like there's not a real issue here?
>
> Mr. Stein[7]: Yes, Your Honor. I think based on the representations made in the [S]chool [D]istrict's response, I will just withdraw that motion.
>
> The Court: All right. Fine. Then the motion will be marked withdrawn. Thank you.

R.R. at 145a.

7 Mr. Stein is legal counsel for Owner.

Further, the trial transcript reads:

> The Court: I had viewed the *Valley Forge* issue as in the nature of an affirmative defense, but if there are brief witnesses who don't have to sit here all day, that's fine with me. Mr. Stein, Mr. Onorato, what's your preference?
>
> Mr. Stein: I'm fine with that, Your Honor.

R.R. at 146a.

It does not appear from the record that Owner had concerns about its ability to conduct discovery or otherwise proceed at trial. Further, by failing to raise these issues at the trial court level, we consider them waived by Owner for our purposes here. Accordingly, we reject Owner's contention that the trial court erred in these regards.

We next address Owner's contention that the School District's appeals for tax years 2018-2020 should not have been permitted to proceed to trial after the appeal for tax years 2011-2017 was withdrawn. Concisely put, we concur with the School District's position that this argument is waived because Owner did not appear to object to same at the trial court level, and further, "[i]n cases where an appeal is pending before a trial court ... subsequent tax assessments are automatically appealed, have a separate status, and continue to exist notwithstanding dismissal of the original assessment appeal." School District's Br. at 33 (citing *525 Lancaster Ave Apts*, 111 A.3d at 1231). For this same reason, we reject Owner's contention that the School District's position here is somehow undermined because its appeals policy was not developed until 2017 - after our Supreme Court issued its opinion in *Valley Forge*, even though the initial assessment appeal was initiated years before the adoption of the policy.

Further, we reject Owner's contention that the trial court erred by determining the School District's monetary threshold approach to tax assessment appeals was implemented in a nondiscriminatory manner and was consistent with our Supreme Court's decision in *Valley Forge*. Although *Valley Forge* established that the Uniformity Clause does not permit a school district to selectively appeal assessments of commercial properties while choosing to forego appeal assessments of other types of properties, such as single-family residential homes, it also clearly enunciated the caveat that a monetary threshold or other criterion would not violate the Uniformity Clause, so long as it is implemented without regard to the type of property in question or the residency status of the property's owner. The School District here established a policy of proceeding on assessment appeals only where such an appeal would yield an annual tax increase of $10,000 or more. This was based on a business decision that the cost of pursuing an appeal would not make it worth it to the School District if the tax yield would be any lower. Although it is likely, in most cases, that such a threshold will include more commercial than residential properties, such a result is not a certainty, and Owner did not establish otherwise or demonstrate that the School District's policy was violative of the standard set forth in *Valley Forge*.

***11** This Court subsequently opined on monetary thresholds and uniformity in tax assessment appeals in *Kennett Consolidated*, a case in which a school district set its policy

of pursuing tax assessment appeals only in instances where a property was underassessed by at least $1 million.[8] In *Kennett Consolidated*, we stated:

> The [d]istrict's actions did not systematically target commercial properties, but, rather, only focused on properties that would be worth the cost and expense of an appeal. *Valley Forge* makes it abundantly clear that there is a balance to be struck between a school district's ability to appeal an assessment and the Uniformity Clause. Thus, a school district's policy that attempts to be fiscally responsible by only appealing assessments that would generate enough revenue to justify the cost of the appeal does not violate the Uniformity Clause.

Id. at 37.

8 We note here that our Supreme Court granted *allocator* in *Kennett Consolidated. See* 240 A.3d 611 (Pa. 2020).

In *Kennett Consolidated*, we relied in part on our opinion in *Punxsutawney Area School District v. Broadwing Timber, LLC* (Pa. Cmwlth., No. 1209 C.D. 2018, filed October 29, 2019) 2019 WL 5561413, in which we determined that

> the [d]istrict's practice thus far has resulted in appeals of commercial or commercially[ ]used properties [but] is not determinative where that practice is implemented or carried out without regard to the type or ownership of a property. The [d]istrict relies on the occurrence of a triggering event to bring a potentially underassessed property to its attention. So far, no sale of residential properties has resulted in a high enough realty transfer tax to warrant review, and [taxpayer/ property owner] has not presented evidence to the contrary. That is not to say that none will in the future, and ... if one does, the same process will be used to determine whether that property's assessment should be appealed.

Kennett Consolidated, 228 A.3d at 39 (quoting *Punxsutawney*, slip op. at 21-22).

Kennett Consolidated and *Punxsutawney* are instructive in the present matter in that, here too, the School District set a monetary threshold for initiating its tax assessment appeals, and thus far, the appeals have implicated properties that are not obviously purely residential in character. However, as we noted in both *Kennett Consolidated* and *Punxsutawney*, this alone does not demonstrate a violation of the Uniformity Clause, per our Supreme Court's holding in *Valley Forge*. Further, as we stated in *East Stroudsburg*, “a taxing district's selection of a property for an assessment appeal that fail[s] to take into account whether the appeal [is] likely to be cost-effective might well be fiscally irresponsible.” *East Stroudsburg*, slip op. at 11, 2019 WL 5250831 at *5.

Read together, our Supreme Court's opinion in *Valley Forge*, and our subsequent case law, establish that the trial court did not err by determining the School District did not violate the Uniformity Clause of the Pennsylvania Constitution.

B. Valuation

Finally, we address Owner's contention that the trial court erred in its determination of the value of the Subject Property.[9] We disagree. The trial court considered the testimony of the appraisers, as well as the testimony of Mr. Goodman, which it specifically addressed, notwithstanding Owner's contention to the contrary, and adequately explained its evaluation of all the testimony and its reasons for reaching its conclusions. This Court does not make its own credibility determinations or second guess the trial court in this regard. We also do not reweigh the evidence. The trial court is the finder of fact.

9 We note here that we reject the School District's assertion that Owner waived the argument that the trial court erred by applying valuation judgments without evidentiary support because Owner failed to include the issue in its Concise Statement of

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> Errors Complained of on Appeal Pursuant to Pa. R.A.P. 1925(b). As Owners' Concise Statement is focused substantially on the methodology for valuation of the Subject Property and includes a specific contention that Mr. Goodman's testimony was disregarded by the trial court, we read it to include this issue.

***12** The trial court considered the testimony and other relevant evidence of a highly technical nature, from credentialed experts, and explained, in sufficient detail, the reasons why it made the determinations it did. Where the trial court had any remaining uncertainty after hearing the opinions of the two appraisers, it typically gave Owner the benefit of the doubt by accepting its appraiser's view over that of the School District's appraiser, reasoning, fairly, that the School District carried the burden of proof. It is important to remember that "[t]he valuation of property is not an exact science ... it is the fact[-]finder's role to determine the weight to be accorded an expert's testimony in this area." *Cedarbrook Realty, Inc.*, 611 A.2d at 340. "[I]t is well[ ]established that the trial judge is the fact-finder in a tax assessment appeal and that all matters of credibility and evidentiary weight are in the province of the fact-finder." *Appeal of Mellon Bank, N.A.*, 467 A.2d 1201, 1202-03 (Pa. Cmwlth. 1983) (internal citation omitted). As we opined in *Willow Valley*:

> The trial court's duty in an assessment appeal is to weigh the conflicting expert testimony and determine a value based upon credibility determinations. The trial court has the discretion to decide which of the methods of valuation is the most appropriate and applicable to the given property. In tax assessment appeals, actual value or fair market value is determined by competent witnesses testifying as to the property's worth in the market; *i.e.*, the price a willing buyer would pay a willing seller, considering the uses to which the property is adapted and might reasonably be adapted. Our review in a tax assessment appeal is narrow such that the trial court's valuation will be affirmed unless its findings are not supported by substantial evidence or it abused its discretion or committed an error of law. The trial court's findings are entitled to great deference, and its decision will not be disturbed absent clear error.

Willow Valley, 810 A.2d at 723-24 (internal citations omitted).

In the present matter, there was nothing irregular or lacking in the trial court's methodology or the manner it went about reaching its conclusions on valuation. Its findings were based on substantial evidence, and there was no "clear error." *Id*. at 724. Thus, we see no basis upon which we would disturb the trial court's determination of the value of the Subject Property.

V. Conclusion

For the foregoing reasons, we determine that the trial court did not err. Accordingly, we affirm the orders of the trial court.

ORDER

AND NOW, this 16th day of July 2021, the October 1, 2019 Order of the Montgomery County Court of Common Pleas is **AFFIRMED**.

All Citations

260 A.3d 1099 (Table), 2021 WL 3009800

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APPENDIX
H

2019 WL 5250831
Only the Westlaw citation is currently available.

THIS IS AN UNREPORTED PANEL DECISION OF THE COMMONWEALTH COURT. AS SUCH, IT MAY BE CITED FOR ITS PERSUASIVE VALUE, BUT NOT AS BINDING PRECEDENT. SEE SECTION 414 OF THE COMMONWEALTH COURT'S INTERNAL OPERATING PROCEDURES.

OPINION NOT REPORTED
Commonwealth Court of Pennsylvania.

EAST STROUDSBURG AREA SCHOOL DISTRICT
v.
MEADOW LAKE PLAZA, LLC, Meadow Lake Plaza, LLC, Pims Properties, L.P., Emily E. Ahnert, et. al., Motel Pines, Inc., Miggy's Corp. Six, Robab Estates, LLC, Saleme Investment Company, Taydan Company, LLC, MNA Stroud Realty, LLC, Novescor, LLC, M&M Ventures, LLC, Braeside Apartments, LLC, and Pocono Medical Center, Monroe County Board of Assessment Revision, Monroe County, East Stroudsburg Borough, Middle Smithfield Township, Smithfield Township, Appellants

No. 371 C.D. 2018
|
Argued: September 9, 2019
|
Filed: October 17, 2019

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge, HONORABLE ELLEN CEISLER, Judge, HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

Opinion

MEMORANDUM OPINION BY JUDGE CEISLER

***1** Meadow Lake Plaza, LLC, Meadow Lake Plaza, LLC, Pims Properties, L.P., Emily E. Ahnert, Motel Pines, Inc., Miggy's Corp. Six, Robab Estates, LLC, Saleme Investment Company, Taydan Company, LLC, MNA Stroud Realty, LLC, Novescor, LLC, M&M Ventures, LLC, Braeside Apartments, LLC, and Pocono Medical Center (collectively, Taxpayers) appeal from the order of the Court of Common Pleas of Monroe County (trial court)[1] dated January 30, 2018 in several consolidated cases.[2]

Taxpayers are owners of real property located in the East Stroudsburg School District (School District) in Monroe County (County).[3] The School District filed a petition for review in the trial court from denials by the Monroe County Board of Assessment Revision (Board) of the School District's assessment appeals for the 2016 and 2017 tax years concerning Taxpayers' properties. The School District contended Taxpayers' properties were under-assessed. Taxpayers argued the requested reassessments violated the tax uniformity requirement of the Pennsylvania Constitution[4] because the School District targeted only commercial properties in its assessment appeals.

While the assessment appeals were pending in the trial court, the County began a countywide reassessment. The trial court found the School District's selection of which assessments to appeal was not unconstitutional and the School District could continue pursuing its assessment appeals while the countywide reassessment was underway. The trial court later granted Taxpayers' motion to certify its order for immediate appeal, and accordingly entered the January 30, 2018 order. After thorough review, we affirm.

I. Background

A. School District's Selection of Properties for Assessment Appeals

***2** As of 2016, the County had not conducted a countywide real property tax reassessment since 1989. Consequently, many properties in the County, including properties located

in the School District, were under-assessed and generating disproportionately low property taxes.

The School District is heavily dependent on local real property tax revenues for its operating funds. *E. Stroudsburg Area Sch. Dist. v. MNA Stroud Realty LLC* (C.C.P. Monroe No. 8354 CV 2015, filed Jan. 30, 2018), slip op. (2018 Op.) at 13. The School District decided to file tax assessment appeals beginning with the 2016 tax year in an attempt to increase revenues.[5] *Id.* at 13 & Finding of Fact (F.F.) No. 6. However, the School District needed to assure that it would be targeting properties for which successful assessment appeals would be likely to generate enough additional tax revenues to justify the costs of the appeals. Reproduced Record (R.R.) at 130a, 134a. After consultation, the School District's Chief Financial Officer (CFO) and its Solicitor estimated that although each assessment appeal is different, the average cost of an assessment appeal would be about $10,000. 2018 Op., F.F. No. 8; R.R. at 130a, 131a, 134a, 150a, 152a, 154a, 157a, 168a.

To help determine which properties to target for assessment appeals, the School District retained the services of Keystone Realty Advisors, LLC (Keystone). 2018 Op., F.F. No. 7. The School District's CFO and its Solicitor instructed Keystone to identify properties sufficiently under-assessed that each would likely generate at least $10,000 per year in additional real property taxes ($10,000 threshold) in the event of a successful assessment appeal. R.R. at 130a, 134a, 150a-52a.

The School District did not suggest to Keystone that residential properties should be excluded from consideration. 2018 Op., F.F. Nos. 7, 10; R.R. at 132a, 160a-64a. To the contrary, the School District specifically instructed Keystone to look for "any and all properties that would meet [the $10,000] threshold." R.R. at 131a; *see also* 2018 Op. at 13-14; R.R. at 168a, 163a.

Ultimately, Keystone identified a number of properties, all of which were income-generating commercial properties, such as apartment complexes, offices, and restaurants. R.R. at 152a, 167a. However, Keystone did not recommend as a policy that the School District plan to appeal assessments only on commercial properties, nor that the School District refrain from filing assessment appeals on residential properties because of potential political fallout. R.R. at 170a. Had Keystone identified residential properties meeting the $10,000 threshold, the School District would have filed assessment appeals regarding those properties as well. R.R. at 132a-35a, 170a-71a.

B. Issues before the Trial Court

Based on Keystone's identification of properties meeting the $10,000 threshold, the School District filed assessment appeals with the Board. After the Board declined to revise the assessments on the properties at issue, the School District petitioned for review in the trial court. *See*, *e.g.*, R.R. at 6a-9a.

***3** Taxpayers opposed the School District's requested reassessments as unconstitutional on two bases.

1. Countywide Non-Uniformity

First, Taxpayers asserted that the County's failure to conduct a full reassessment since 1989 had resulted in such widespread non-uniformity of assessments that the County's continued use of 1989 as the base year[6] for assessments was unconstitutional. Ultimately, the trial court agreed; no party challenges that decision on appeal to this Court.

The trial court concluded the correct remedy normally would be to order a countywide reassessment. However, by the time the trial court issued its decision, a reassessment of all properties in the County was already underway. Taxpayers argued the School District should not be permitted to pursue assessment appeals while the reassessment was pending, but the trial court rejected that argument. The trial court declined to order any relief other than retaining jurisdiction to monitor the progress of the countywide reassessment. 2018 Op. at 17.

2. Uniformity in the School District's Assessment Appeals

Second, Taxpayers contended the School District, in its selection of properties for assessment appeals, created an unconstitutionally non-uniform subclass of taxpayers by targeting solely commercial properties, in violation of our Supreme Court's holding in *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District*, 163 A.3d 962 (Pa. 2017). In *Valley Forge*, the Court found tax assessment appeals that deliberately targeted only commercial properties created impermissible subclasses of taxpayers or properties, resulting in unconstitutional non-

uniformity of taxes. Taxpayers argued the School District's use of the $10,000 threshold was non-uniform because the School District here, as in *Valley Forge*, chose to exclude residential properties from its assessment appeals. Alternatively, Taxpayers argued that even if facially neutral, the $10,000 threshold was unconstitutional as applied, because it had the non-uniform effect of applying only to commercial properties.

At a hearing in the trial court, the School District offered testimony from its CFO explaining that its selection of properties for assessment appeals arose solely from its monetary cost-benefit analysis in consultation with its Solicitor and Keystone. The trial court specifically found the testimony of the School District's CFO to be credible. 2018 Op. at 14.

In opposition, Taxpayers sought to raise an inference that the $10,000 threshold was a pretext and that the School District was, in reality, deliberately exempting residential properties from its assessment appeals. Taxpayers presented tax cards for two residential properties in the School District that Taxpayers argued were sufficiently under-assessed to meet the $10,000 threshold for assessment appeals. R.R. at 177a-81a, 366a-71a. However, on cross-examination, Taxpayers' witness, the County's chief assessor and tax claim officer, acknowledged that Taxpayers' argument concerning those two properties was based solely on the properties' deed prices; that deed price is just one factor in determining the correct assessment; and that the County does not change an assessment based only on deed price. R.R. at 182a-83a. By contrast, Keystone examined multiple factors in its property analyses for the School District. R.R. at 185a-88a.

***4** Taxpayers also pointed to school board finance committee meeting minutes noting one committee member's question concerning whether any of the School District's assessment appeals involved residential properties. R.R. at 158a, 265a. Additionally, Taxpayers noted that although there were school board minutes reflecting approval of Keystone's contract with the School District, no meeting minutes memorialized any formal board action approving the $10,000 threshold. R.R. at 143a-44a, 151a; *see also* R.R. at 168a-69a. Taxpayers further contended that Keystone or the School District “missed” several properties meeting the $10,000 threshold; the School District disputed that it “missed” any residential properties. *See* R.R. at 133a, 135a, 160a-62a.

The trial court rejected Taxpayers' evidence as insufficient to support their assertion. Having accepted the School District's evidence as credible, the trial court found as a fact that the School District based its selection of properties for assessment appeals solely on cost-effectiveness and neither targeted nor excluded any particular category of properties.

The trial court determined that *In re Appeal of Springfield School District*, 101 A.3d 835 (Pa. Cmwlth. 2014), *overruled in part on other grounds by Valley Forge*, in which this Court approved the use of purely monetary criteria in choosing properties for assessment appeals, applied in this case. The trial court reasoned that *Valley Forge* tacitly approved the use of such criteria as well. The trial court therefore concluded the School District's use of the $10,000 threshold, a purely monetary criterion, in choosing properties to target for assessment appeals was constitutionally permissible.

The trial court also rejected Taxpayers' related argument that the $10,000 threshold was unconstitutional as applied because it had the effect of identifying only commercial properties for assessment appeals. The trial court reasoned that *Valley Forge* did not invalidate a taxing district's statutory right to file assessment appeals, and there must be some constitutional means of choosing which assessments to appeal. The trial court concluded the School District's blind $10,000 threshold was constitutional.

This appeal by Taxpayers followed.

II. Issues

On appeal,[7] Taxpayers reassert their argument that the School District's use of the $10,000 threshold in selecting properties for assessment appeals created an unconstitutionally non-uniform subclass of taxpayers. Taxpayers insist that because the School District selected only commercial properties for assessment appeals, its selection process was unconstitutional either facially or as applied.

Taxpayers also renew their contention that because the trial court found the County's continued use of a 1989 base year for tax assessments unconstitutional, the School District's appeals of the current assessments are improper. Therefore, Taxpayers argue that even if the $10,000 threshold is a permissible criterion in selecting assessments to appeal, the School District cannot pursue any assessment appeals until the countywide reassessment is completed.

III. Discussion

A. Propriety of the $10,000 Threshold for Assessment Appeals

In *Springfield*, this Court considered a tax assessment appeal similar to the appeals at issue here. The school district in *Springfield* chose to appeal assessments where there was an estimated potential tax revenue gain of $9,000 to $11,000 per year – notably comparable to the $10,000 threshold applied by the School District here.[8] Like the $10,000 threshold here, the monetary threshold applied in *Springfield* resulted in assessment appeals affecting commercial properties. However, this Court held that such a result did not warrant a conclusion that the selection of properties for assessment appeal based on a monetary threshold was unconstitutionally non-uniform. However, we also reasoned that a decision to appeal assessments only relating to commercial properties would not create an impermissibly non-uniform subclass of taxpayers or properties.

***5** Subsequently, in *Valley Forge*, a group of taxpayers challenged a school district's decision to appeal assessments of commercial properties but not residential properties. The school district focused solely on commercial properties, based on a general perception that their values were usually higher than the values of residential properties, and further, that appeals of assessments on residential properties would be politically unpopular. Our Supreme Court agreed with the taxpayers that such discrimination between property classifications created impermissible subclasses that were unconstitutionally non-uniform. The Court also overruled *Springfield* to the extent that this Court had approved selections of properties for assessment appeals based on their commercial or residential character. Specifically, 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."[9] *Valley Forge*, 163 A.3d at 978.

Of significance here, however, our Supreme Court in *Valley Forge* expressly noted that unlike a selection based on the commercial or residential character of a property, a taxing district's choice to pursue assessment appeals based on financial criteria would not necessarily offend the uniformity provision of the Pennsylvania Constitution:

> 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 of [*sic*] 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 or the status of its owner as a resident or non-resident of the taxing district.

Valley Forge, 163 A.3d at 975 n.13. Further, the Court took pains to observe "that nothing in [the *Valley Forge*] 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 or the residency status of its owner." *Id.* at 979.

Here, the trial court concluded that our holding in *Springfield* and the quoted portions of *Valley Forge* supported the School District's position that the $10,000 threshold is constitutional. We agree. Contrary to Taxpayers' argument, we find nothing in our Supreme Court's analysis in *Valley Forge* 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.

Taxpayers also challenge the School District's assertion that it relied on the $10,000 threshold alone. They argue that the $10,000 threshold, even if facially neutral, resulted in assessment appeals affecting only commercial properties. They suggest that the District intentionally used the $10,000 threshold as a pretext to avoid selecting any residential properties for assessment appeals.

Like the trial court, we reject this assertion by Taxpayers.

The trial court was the finder of fact in this case. As such, it maintained exclusive province over the credibility of witnesses and the weight of the evidence. *In re Penn-Delco Sch. Dist.*, 903 A.2d 600 (Pa. Cmwlth. 2006), *appeal denied*, 921 A.2d 499 (Pa. 2007). The trial court was free to believe all, some, or none of the evidence presented, to make all credibility determinations, and to resolve all conflicts in the

evidence. *Boro Constr., Inc. v. Ridley Sch. Dist.*, 992 A.2d 208 (Pa. Cmwlth. 2010).

***6** This Court is prohibited from making contrary credibility determinations or reweighing the evidence. *Penn-Delco*. We are bound by the findings of the trial court that have adequate support in the record, so long as those findings do not reflect capricious disregard of competent and credible evidence. *Leon E. Wintermyer, Inc. v. Workers' Comp. Appeal Bd. (Marlowe)*, 812 A.2d 478 (Pa. 2002). Capricious disregard occurs only when the fact-finder deliberately ignores relevant, competent evidence. *Id.*

Here, the trial court credited testimony that the School District's CFO and its Solicitor concluded the $10,000 threshold was the minimum potential gain that would make an assessment appeal cost-effective for any property. The trial court likewise credited testimony that the School District relied on Keystone to identify properties meeting the $10,000 threshold; that Keystone was instructed to search for any and all properties meeting that threshold; and that the School District would have filed assessment appeals relating to residential properties as well as commercial properties, had Keystone identified any residential properties as meeting the $10,000 threshold. That testimony constituted substantial evidence supporting the trial court's factual findings.

The trial court also properly rejected Taxpayers' evidence as insufficient. Citing *Finter v. Wayne County Board of Assessment Appeals*, 889 A.2d 678 (Pa. Cmwlth. 2005) and *Albarano v. Board of Assessment & Revision of Taxes & Appeals*, 494 A.2d 47 (Pa. Cmwlth. 1985), the trial court found Taxpayers' presentation of tax cards showing assessments and sale prices were legally insufficient to support a finding of market values of the residential properties allegedly meeting the $10,000 threshold. 2018 Op. at 15. We agree with the trial court's legal conclusion. *Accord Springfield* (taxpayer offering evidence of assessments and sale prices of other properties could not sustain burden of proving market value of the other properties as a matter of law, because taxpayer gave court no information on which to base a finding of the other properties' market values) (citing *Finter* and *Albarano*). Further, as the trial court observed, even assuming there were residential properties that met the $10,000 threshold, Taxpayers offered no evidence that the School District knowingly failed to file assessment appeals regarding any such properties. *See* 2018 Op. at 15.

Additionally, we agree with the trial court that the $10,000 threshold is not unconstitutional as applied. Taxpayers cite no supporting authority for their argument, asserting that the issue is one of first impression. However, as the trial court observed, our Supreme Court in *Valley Forge* did not invalidate the statute authorizing assessment appeals by taxing districts. 2018 Op. at 14. Moreover, the use of a reasonable blind monetary screen such as the $10,000 threshold was expressly approved by this Court in *Springfield* and implicitly approved by our Supreme Court in *Valley Forge*. We conclude that the $10,000 threshold is reasonable and does not violate the uniformity requirement of the Pennsylvania Constitution, despite the fact that in this particular instance, only commercial properties in the School District met that threshold.

B. Assessment Appeals During Countywide Reassessment

In their alternative argument, Taxpayers assert that even if the $10,000 threshold is a permissible criterion for the School District's selection of properties for assessment appeals, the School District's pending assessment appeals concerning Taxpayers' properties should still be dismissed. Because the trial court determined that continued use of the 1989 base year by the County would be unconstitutional, Taxpayers contend any appeal by the School District that would require application of the 1989 base year would likewise be unconstitutional. Therefore, Taxpayers argue the School District can no longer pursue its assessment appeals against their properties. We discern no merit in this argument.

***7** The trial court reasoned that eliminating assessment appeal rights during the pendency of the countywide reassessment would improperly "take away the rights of landowners who are over-assessed to obtain a reduction during that time period. It will also prevent a school district from identifying properties which are under-assessed and bringing them closer to the county mean ratio." *E. Stroudsburg Area Sch. Dist. v. Novescor, LLC* (C.C.P. Monroe No. 8369 CV 2015, filed Jan. 10, 2017), slip op. at 18. We agree.

As noted above, the School District has a statutory right to appeal the assessment of any property 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. Taxpayers argue that property owners are entitled

to pursue assessment appeals despite the pendency of the countywide reassessment, but the School District is not entitled to do so. Br. for Appellants at 31. In light of their acknowledgment that property owners can continue to pursue appeals of assessments made under the 1989 base year, Taxpayers will not be heard to argue that the School District lacks a similar right. Further, Taxpayers' suggestion that property owners may seek reassessments to *reduce* their taxes under the previously-applicable base year while a countywide reassessment is underway, but a taxing district may *not* seek reassessments to *increase* property owners' taxes, is facially inequitable and contrary to the School District's statutory right of appeal under 53 Pa.C.S. § 8855.

IV. Conclusion

Based on the foregoing discussion, we affirm the trial court's orders.

ORDER

AND NOW, this 17th day of October, 2019, the orders of the Court of Common Pleas of Monroe County are AFFIRMED.

All Citations

Not Reported in Atl. Rptr., 2019 WL 5250831

Footnotes

1 The Honorable Arthur L. Zulick presided.

2 Upon review of this matter for argument purposes, it appears that the trial court certified this matter for appeal pursuant to Pa. R.A.P. 341 and consolidated the matters. The School District filed only one notice of appeal. Although no party has raised the issue here, a single notice of appeal was improper under our Supreme Court's decisions in *Malanchuk v. Tsimura*, 137 A.3d 1293 (Pa. 2016), *Kincy v. Petro*, 2 A.3d 490 (Pa. 2010) and *Azinger v. Pa. R. Co.*, 105 A. 87 (Pa. 1918) and this Court's decision in *Knox v. SEPTA*, 81 A.3d 1016 (Pa. Cmwlth. 2013). Consolidation is appropriate only in those cases where the parties and the issues are the same ("complete" consolidation). Complete consolidation could not occur here because the parties were not the same in all of the separate actions. Therefore, a single notice of appeal was improper.

3 The caption in this case also lists the Monroe County Board of Assessment Revision (Board), Monroe County (County), East Stroudsburg Borough (Borough), and Smithfield and Middle Smithfield Townships (Townships) among the Appellants. The Borough has joined in the appellate brief of Appellee, East Stroudsburg Area School District. The Board has filed a notice of non-participation. The record does not reflect any participation by the County or the Townships.

4 "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.

5 The School District is entitled to pursue assessment appeals to the same extent as a property owner: "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 ...." 53 Pa.C.S. § 8855.

6 The "base year" is defined as "[t]he year upon which real property market values are based for the most recent countywide revision of assessment of real property or other prior year upon which the market value of all real property of the county is based for assessment purposes." 53 Pa.C.S. § 8802.

7 This Court's review of the trial court's 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 Cty. Div. of Assessment*, 149 A.3d 442 (Pa. Cmwlth. 2016) (*en banc*).

8 Taxpayers attempt to distinguish *Springfield*, arguing that it concerned a single assessment appeal. Taxpayers suggest the use of a monetary threshold in selecting a single property for an assessment appeal is permissible, but applying the same monetary threshold in multiple selections of properties is unconstitutional. *See* Br. for Appellants at 27 n.8; R.R. at 91a-92a. We reject the contention that the number of properties involved, *i.e.*, the size of the alleged subclass of taxpayers, would alone validate or invalidate the application of a blind monetary threshold.

9 For example, in *Weissenberger v. Chester County Board of Assessment Appeals*, 62 A.3d 501 (Pa. Cmwlth. 2013), a group of school districts selecting properties for assessment appeals "hired a consultant to evaluate a different class each year, one year looking at shopping centers, then apartment complexes, with other evaluations expected each year in the future." *Id.* at 507. *Valley Forge* implicitly disapproved property selections like those in *Weissenberger*.

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APPENDIX
I

2018 WL 10602105 (Pa.Com.Pl.) (Trial Order)
Court of Common Pleas of Pennsylvania.
Allegheny County

Joseph Nissim MARTEL and Ester Martel, husband and wife, on behalf of themselves and all other similarly situated, Plaintiff,

v.

ALLEGHENY COUNTY, City of Pittsburgh, Pittsburgh Public Schools and Allegheny County Board of Property Assessment Appeals and Review, Defendants.

No. GD17-010704.
March 29, 2018.

*1 CIVIL DIVISION

Opinion

Robert J. Colville, Judge.

Robert J. Colville

March 29th, 2018

Background

Plaintiffs have filed a Class Action Complaint challenging the practices of the School District of the City of Pittsburgh ("the School District"), the City of Pittsburgh ("the City"), the Board of Property Assessment Appeals and Review ("the Board"), and the County of Allegheny ("the County") to the extent that each entity participates in or permits other Defendants to appeal the assessed values of properties based, at least in part, upon current market valuations following recent sales of properties (in years after the base year assessment[1]). Plaintiffs argue that in the construct of the "base year" assessment system that has been applied in Allegheny County since 2002[2], the Allegheny County Administrative Code ("the County Code") and the Board of Property Assessment Appeals and Review's Rules ("the Board Rules") properly prohibit taxing bodies from appealing the assessed values of properties when based, even if only in part, upon current market values in years following the base year assessment. Plaintiffs argue that if taxing bodies are permitted to do so, such conduct would constitute de facto spot reassessment, and a lack of uniformity would be created, presumably because certain recently sold properties are sold at a disproportionately higher current market value that, in turn, even after application of the common level ratio, results in a disproportionately higher adjusted base year assessed value compared to the average base year assessed value of the remainder of the County's properties that were not recently sold. Interestingly, within the context of their uniformity argument, Plaintiffs do not assert that property owners do not similarly enjoy a right to appeal based upon current market values. To the contrary, Plaintiffs note that such appeals are not prohibited under either the County Code or the Board Rules. The Defendants in this case acknowledge and concede that the County Code and the Board Rules, as written, do not permit taxing bodies to take appeals based upon current market values, but argue that if these rules were applied as written, such application would constitute violations of the law designed to protect the interests of both property owners and taxing bodies equally, and further that application of the County Code and Board Rules in this respect would, in fact, create a lack of uniformity.

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Defendants have raised specific preliminary objections to Plaintiffs claims in several respects. These objections are addressed below.

A. Adequate Statutory Remedy at Law and "As Applied" Constitutional Challenge (Equity Jurisdiction Analysis)

The School District has filed Preliminary Objections to Plaintiffs' Class Action Complaint wherein it asserts that Plaintiffs have an adequate statutory remedy at law. The School District asserts that Plaintiffs' demand for equity relief is insufficient inasmuch as the sole cause of action asserted is for an "as-applied" constitutional challenge.

***2** Both parties agree that this Court should exercise equitable jurisdiction only after applying a two-part test to determine whether: 1) a substantial constitutional question is raised, and 2) there is a lack of an adequate statutory remedy. *Beattie v. Allegheny County*, 907 A.2d 519 (Pa. 2006). The School District further asserts that the substantial question of constitutionality may not be a mere allegation of such a substantial question, citing *Borough of Greentree v. Board of Property Assessments*, 328 A.2d 819, 822 (Pa. 1974).

At the heart of the School District's initial preliminary objection is the allegation that the claims asserted by Plaintiffs constitute "as-applied" constitutional challenges to the practice of failing to apply the Board Rules and the County Code. Specifically, Plaintiffs assert that the Board Rules and the County Code do not permit determinations of assessed values of properties (subject to a base year assessment system such as is utilized in Allegheny County) based upon evidence of current market value, where the taxing body is the appellant.

While the School District properly reminds the Court that it must be cautious to grant access to the equity powers of the Court in every "as applied" challenge, *Kowenhoven v. County of Allegheny*, 847 A.2d 172 (Pa. Commw. Ct. 2004), when viewed within the context of the facts and allegations set forth in Plaintiffs' Class Action Complaint, this Court is satisfied that the two fundamental requirements for invoking the Court's equity powers have been satisfied. First, while perhaps not the principal thrust of the Plaintiffs' Complaint, Plaintiffs plainly assert a substantial constitutional issue in the form of a lack of uniformity challenge under both the Pennsylvania and U.S. Constitutions.[3]

The heart of the argument between the parties as to Plaintiffs' obligation to exhaust administrative/statutory remedies is really with respect to the second requirement, i.e. whether there is a lack of an adequate statutory remedy. Facial constitutional challenges arise where the language of the challenged law is, on its face, purportedly unconstitutional. "As applied" constitutional challenges arise where the government's application of the challenged law is purportedly unconstitutional. Here, there is no real "challenged law." To the contrary, Plaintiffs do not argue that the County Code and Board Rules are unconstitutional on their face or that they are being unconstitutionally misapplied, but rather that they are not being applied at all. Defendants do not dispute this factual contention. In my view, whether characterized as an "as-applied" constitutional challenge or not, Plaintiffs plainly assert a fundamental constitutional violation which is integrally connected to, if not a fundamental element of, the precise statutory remedy that Defendants assert Plaintiffs must first exhaust. Interestingly, Defendants argue in their brief "it is Plaintiffs' clear intent to have this Honorable Court oversee the assessment process and re-write the General County and Second Class County Assessment Laws." Contrary to Defendants' assertion, Plaintiffs are not seeking an application of the state laws different than as written, but rather an application of the local rules and ordinances as written. All parties acknowledge that Defendants, systematically, do not abide by, or adhere to, the County Code and the Board Rules as written. Accordingly, as applied to the facts and allegations in this case, the distinction between an "as-applied" and a facial constitutional challenge appears to constitute no meaningful distinction at all.

***3** Defendants further rely upon *Beattie* and *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District*, 163 A.3d 962 (Pa. 2017) to buttress their assertion that Plaintiffs' "as-applied" constitutional challenge does not properly invoke this Court's equity jurisdiction. I need only briefly reference an important distinction between this case and *Beattie* on this point. The Supreme Court of Pennsylvania in *Beattie* noted that the plaintiffs there wanted their assessments lowered to what they felt was

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accurate, which the Supreme Court determined was within the ordinary procedures of the statute. Here, Plaintiffs seek something much broader than what the statutory appeals process can provide. Plaintiffs seek a declaration that the Defendants' systemic and regular practice of ignoring elements of the County Code and Board Rules which Plaintiffs contend should apply in the statutory appeal process is unlawful and unconstitutional. With respect to *Valley Forge*, (while the Court generally agrees with the Defendants' analysis of the limitations of that decision respecting substantive uniformity discussed in later sections of this Opinion)[4], this Court does not perceive *Valley Forge* as a meaningful authority for the proposition that Plaintiffs' alleged claims in this case do not properly invoke the equity powers of the Court. For the reasons discussed above, Defendants' Preliminary Objection asserting that Plaintiffs have failed to exhaust an administrative remedy is also without merit.

B. Number of Members of the Purported Class.

Next, the School District asserts that "the purported class articulated by Plaintiffs has a population of zero." School District's Br. 11. The School District argues that even the Plaintiffs themselves are not members of the class as defined in the Plaintiffs' Complaint. As described in the Complaint, Plaintiffs' proposed class consists of:

> all property owners in Allegheny County whose real estate tax assessment value was increased for the tax years 2014-2016 by the Board of Property Assessment Appeals and Review of Allegheny County (the "Appeals Board") due to a tax assessment appeal initiated by either Allegheny County, the City of Pittsburgh, or Pittsburgh Public Schools, where the decision was reached on the basis of current market value and not based on an addition or removal of improvements on the subject property or physical changes in the land of the subject property.

Pls.' Compl. 2-3. The School District argues that there are zero members of this described class because, it contends, there are no properties within the School District of Pittsburgh whose real estate property tax assessment is or was based on "current market value" in the tax years 2014- 2016. The School District contends, rather, that all property tax assessments in Allegheny County and within the School District of Pittsburgh are based on 2012 base year values. In this respect, the School District appears to be taking issue with Plaintiffs' use of the phrase "current market value" as something akin to a simple matter of semantics (at least to the extent that this Court can understand the argument).

To better understand the parties' difference of opinion on this (ultimately trivial) point (and as worthwhile background) it is helpful to briefly discuss the reality of how assessments are conducted, and how Plaintiffs propose they should be conducted, in Allegheny County. Allegheny County most recently conducted a base year county-wide reassessment in 2012 (applicable in 2013). At that time, each and every property in Allegheny County was reassessed based upon evidence of its then-actual-current market value, and assigned a presumptively uniform corresponding base year assessed value. If any party (taxing body or taxpayer) felt aggrieved by the assigned base year assessed value, that party could, at that time, appeal the assessment and proffer, or rebut, evidence of current market value, including recent sales. After the base year, however, certain local rules (the County Code and Board Rules, discussed in greater detail below) prohibit taxing bodies from offering evidence of recent sales, including sales of the subject property itself, to challenge the base year assessment. It is precisely this practice that Plaintiffs allege creates a lack of uniformity and harms the putative class members described in Plaintiffs' Complaint, i.e. owners of properties within the School District of Pittsburgh whose real estate property tax assessment is or was based on "current market value" in the tax years 2014-2016. The School District contends that "there are zero properties in Allegheny County within the School District of Pittsburgh whose real estate property tax assessment is or was *based on 'current market value'* in the tax years 2014-2016," because assessed values are calculated based upon *base year assessed values.* School District's Br. 12 (emphasis added). This'distinction, however, is nearly illusory. All parties agree that the Defendants systematically ignore (for reasons more fully discussed below) the local rules that putatively prohibit taxing bodies from appealing assessed values based upon current market values, or recent sales, after the base year. It is the practice in Allegheny County that taxing bodies do proffer evidence derived from a recent sale of a property in appeals subsequent to the base year to determine current market value. The Board, in turn, utilizes this current market value in order to "reverse engineer" an adjusted base year assessed value by application of the common level ratio to post-base year current market value. The School District implies that the description of the proposed class in the Plaintiffs' Complaint intends to describe property owners whose real estate tax assessment was decided

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"on the basis of current market value [alone]." A fair reading of the Plaintiffs' Complaint does not permit this interpretation. Plaintiffs' Complaint plainly intends to describe the class of Plaintiffs as:

> ***4** all property owners in Allegheny County whose real estate tax assessment value was increased for the tax years 2014-2016 by the Board of Property Assessment Appeals and Review of Allegheny County (the "Appeals Board") due to a tax assessment appeal initiated by either Allegheny County, the City of Pittsburgh, or Pittsburgh Public Schools, where the decision was reached [at least in part] on the basis of current market value and not based on an addition or removal of improvements on the subject property or physical changes in the land of the subject property.

Pls.' Compl. 2-3 (bracketed language added). The School District's observation that the currently described class, if subjected to a particularly strict interpretation would render it a class populated by zero members is, at best, clever, but not particularly meaningful for purposes of this Court's consideration of the Preliminary Objections before it.[5] When read fairly, and within the context of the remaining allegations of the Plaintiffs' Complaint, it is evident that the Plaintiffs complain that the practice of the Defendants, whereby they utilize a recent sale in order to establish a current market value, which is then subjected to an application of the common level ratio so as to "reverse engineer" a base year assessed value is improper. As to this contention, a putatively substantive and meaningful argument is properly joined by the parties, and, at a minimum, Plaintiffs identify a class of individuals larger than zero. Accordingly, the School District's preliminary objections are overruled in this respect.

C. Class Action Relief Does Not Permit Tax Refunds.

Next, School District asserts that the Plaintiffs' prayer for relief includes an express request that this Court declare that taxpayers are entitled to a refund. Precisely what the Plaintiffs' Complaint's prayer for relief intends to request from the Court with respect to tax refunds is not entirely clear to the Court. In any event, as argued by the School District, (and, I believe, as conceded by the Plaintiffs at oral argument) there exists significant decisional authority that recognizes that tax refunds are not an available form of relief within the context of a class action law suit. *See Stranahan v. Cty. of Mercer*, 697 A.2d 1049, 1052 (Pa. Commw. Ct. 1997) ("Pennsylvania law does not permit class actions to be utilized to obtain individual tax refunds where a specific statutory remedy is available"); *see also In re Macky*, 687 A.2d 1186 (Pa. Commw. Ct. 1997); *Lower Merion School District v. Montgomery County Board of Assessment Appeals*, 642 A.2d 1142 (Pa. Commw. Ct. 1994); *Dunn v. Board of Property Assessment, Appeals, and Review of Allegheny County*, 877 A.2d 504 (Pa. Commw. Ct. 2005). To the extent that the Plaintiffs' prayer for relief might be interpreted to request such a declaration, and/or to request the grant of such a refund, this Preliminary Objection is sustained.

D. Taxing Bodies Enjoy the Same Right to File Appeals as Property Owners.

The Court next addresses the issue raised in Section D of the School District's Preliminary Objections, namely whether the home rule laws at issue, as written, are in violation of the Second Class and the General County Assessment Codes. Plaintiffs seek relief against Defendants based upon allegations that Defendants have harmed Plaintiffs by failing to adhere to the Allegheny County Administrative Code Chapter 5, Article 207, § 5-207.06(B)(7) ("Allegheny County Administrative Code § 5-207.06") and Allegheny County Board of Assessment Appeals and Review Rules and Regulations, Rule IV, Section 3(A) ("Appeals Board Rule IV, Section 3"), both of which are ordinances enacted by Allegheny County pursuant to Charter Law (hereinafter, "home rule laws"). *See* 53 Pa.C.S.A. § 2964. Plaintiffs argue that a taxing body has no legal authority to commence, prosecute, or prevail on an appeal based (even in part) upon a recent sale and/or current market value, and that the School District's actions in the present case are, accordingly, unlawful.

***5** There is no dispute that Defendants do not strictly adhere to the provisions of Appeals Board Rule IV, Section 3 and Allegheny County Administrative Code §5-207.06. Defendants argue, however, that these rules, as written, and not as applied, violate the Second Class and the General County Assessment Codes, and thus cannot serve as the basis of Plaintiffs' claim. Defendants further argue that neither the Appeals Board nor the County enforce these rules, because to do so would constitute a violation of state law. Defendants also argue that the rules at issue violate Charter Law.

Home rule laws are presumptively valid if no restriction is found in the Constitution, the Home Rule Charter, or state law. *Ziegler v. City of Reading*, 142 A.3d 119, 132 (Pa. Commw. Ct. 2016). However, state law will only preempt a home rule law if that state law is one of statewide applicability. *See Ziegler*, 142. A.3d at 132; *Wecht v. Roddey*, 815 A.2d 1146, 1152 (Pa. Commw. Ct. 2002). Plaintiffs argue that neither the Second Class County Assessment Law nor the General County Assessment Law is a law of statewide application, and that, accordingly, neither preempts the home rule laws at issue. The Commonwealth Court of Pennsylvania has previously held that Second Class County Law is not applicable statewide and, accordingly, does not have preemptive effect. *See Bd. of Prop. Assessment, Appeals Review & Registry of Allegheny Cty. v. Cty. of Allegheny*, 773 A.2d 816, 821 (Pa. Commw. Ct. 2001) ("The Assessment Law governs *only* second class counties. In order for the Assessment Law to be applicable in every part of the Commonwealth, every county would have to be a second class county. That is absurd."); *see also Ziegler v. City of Reading*, 142 A.3d 119, 132 (Pa. Commw. Ct. 2016) (explaining that Allegheny County was not limited by the Second Class County Code because the Code is not an act of the General Assembly that is applicable in every part of Pennsylvania). In any case, I need not reach the question of whether preemption applies in the present case[6] because, as discussed below, I find that Appeals Board Rule IV, Section 3 and Allegheny County Administrative Code §5-207.06, to the extent that they restrict the appeal rights of taxing bodies, violate the Second Class County Charter Law, and are thus invalid for that reason.

***6** A home rule law is invalid if it violates the applicable Home Rule Charter. The Second Class County Charter Law provides that:

> (h) With respect to the following subjects, the charter shall not give any power or authority to the county contrary to or in limitation or enlargement of powers granted by acts of the General Assembly which are applicable to counties of the second class:
>
> ....
>
> (8) The assessment of real or personal property and persons for taxation purposes.

16 P.S. § 6107-C(h)(8). The Commonwealth Court of Pennsylvania has interpreted this provision to mean that "a home rule charter may not give a second class county power to legislate with respect to the substantive rules governing the making of assessments and valuations of property by Certified Pennsylvania Evaluators." *Bd. of Prop. Assessment, Appeals Review & Registry of Allegheny Cty. v. Cty. of Allegheny*, 773 A.2d 816, 820-21 (Pa. Commw. Ct. 2001). A county may, however, pass procedural rules which establish a system that is contrary to the Second Class County Assessment Law. *Bd. of Prop. Assessment, Appeals Review & Registry of Allegheny Cty*, 773 A.2d at 821. *See also Daugherty v. Cty. of Allegheny*, No. GD 06-013464, Opinion and Order of Court at 6 (Ct. Comm. Pl. Allegheny Cnty. Sept. 5, 2006) (Wettick, J.), *aff'd* 920 A.2d 936 (Pa. Commw. Ct. 2007) ("[T]he County may enact ordinances addressing who is going to assess properties within the County and who is going to hear assessment appeals. However, under 16 P.S. § 6107-C(h)(8), the Second Class County Assessment Law governs how property is to be valued.").

In *Daugherty*, the Honorable R. Stanton Wettick addressed a taxpayer's assertion that a home rule law[7] violated a taxpayer's right, under the Second Class County Assessment Law, to have the current fair market value of their property considered during an appeal of a tax assessment. Judge Wettick held that "[t]he provisions in the Second Class County Code allowing taxpayers, in an appeal before the Appeals Board, to have their property assessed based on current market value is a substantive rule regarding the making of assessments." *Daugherty v. Cty. of Allegheny*, No. GD 06-013464, Opinion and Order of Court at 6 (Ct. Comm. Pl. Allegheny Cnty. Sept. 5, 2006) (Wettick, J.), *aff'd* 920 A.2d 936 (Pa. Commw. Ct. 2007). In affirming Judge Wettick's holdings, the Commonwealth Court of Pennsylvania held that:

Section 10 of the Second Class County Assessment Code gives the taxpayer the ability to challenge its assessment for the reason that the base year market value no longer reflects the property's current market value.... The trial court did not err in declaring

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Rule IV's limitation on assessment appeals to be invalid. Rule IV impermissibly circumscribed the taxpayers' appeal rights that are guaranteed in Section 10 of the Second Class County Assessment Code.

Daugherty v. Cty. of Allegheny, 920 A.2d 936, 943 (Pa. Commw. Ct. 2007). The relevant provisions of the Second Class County Assessment Law considered in *Daugherty* are:

***7** (c) In any appeal of an assessment the board shall make the following determinations:

(1) The current market value for the tax year in question.

(2) The common level ratio.

(3) The fair market value, as determined in accordance with section 402 of the act of May 22, 1933 (P.L. 853, No. 155), known as "The General County Assessment Law."

(d) The board, after determining the current market value of the property for the tax year in question, shall then apply the established predetermined ratio to such value unless the common level ratio varies by more than fifteen percent (15%) from the established predetermined ratio, in which case the board shall apply the common level ratio to the current market value of the property for the tax year in question. For the initial year of the implementation of county-wide reassessment, appeals shall be solely on the basis of fair market value.

(e) Nothing herein shall prevent any appellant from appealing any base year valuation without reference to ratio.

72 P.S. § 5452.10.[8]

The same provisions of the Second Class County Assessment Law are at issue in the present case. The Second Class County Assessment Law does not expressly give taxing bodies the ability to have their appeals heard on the basis of current market value. However, it neither expressly, nor, even impliedly suggests the contrary. Moreover, the above provisions have been determined to give taxpayers the right to have their property assessed based on the current market value of their property during an appeal of a tax assessment.[9] *Daugherty v. Cty. of Allegheny*, 920 A.2d 936, 943 (Pa. Commw. Ct. 2007). This right may be most clearly extended to taxing bodies through the General County Assessment Law, which provides:

***8** The corporate authorities of any county, city, borough, town, township, school district or poor district, which may feel aggrieved by any assessment of any property or other subject of taxation for its corporate purposes, shall have the right to appeal therefrom in the same manner, subject to the same procedure, and with like effect, as if such appeal were taken by a taxable [i.e. taxpayer] with respect to his property.

72 P.S. § 5020-520 (footnote omitted) (bracketed language added). The Second Class County Assessment Law does not repeal the provisions of the General County Assessment Law unless the latter is inconsistent with the former. 72 P.S. § 5452.20. Thus, in the absence of inconsistency, and Plaintiffs point to none, the General County Assessment Law allows taxing bodies to appeal tax assessments "in the same manner, subject to the same procedure, and with like effect, as if such appeal were taken by a [taxpayer] with respect to his property." 72 P.S. § 5020-520. Taxpayers, during an appeal of a tax assessment, can elect to have their property assessed based on the current market value of their property. Accordingly, the General County Assessment Law permits a taxing body, during an appeal of a tax assessment, to have the property at issue assessed based on the current market value of the property. Further, the provisions that provide this right to taxpayers have been determined to be substantive rules regarding the making of assessments. *Dougherty v. Cty. of Allegheny*, No. GD 06-013464, Opinion and Order of Court at 6 (Ct. Comm. Pl. Allegheny Cnty. Sept. 5, 2006) (Wettick, J.), *aff'd* 920 A.2d 936 (Pa. Commw. Ct. 2007) ("The provisions in the Second Class County Code allowing taxpayers, in an appeal before the Appeals Board, to have their property assessed based on current market value is a substantive rule regarding the making of assessments.") As such, there exists no principled basis

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to conclude that the provision of the General County Assessment Law which provides this same right to taxing bodies is not also a substantive rule regarding the making of assessments.

The home rule laws at issue are Appeals Board Rule IV, Section 3 and Allegheny County Administrative Code § 5-207.06. Appeals Board Rule IV, Section 3 provides:

> The determination of value will be based on the prevailing base year as established by the County or, *at the election of the property owner*, as the fair market value for the tax year at issue, in accordance with Pennsylvania law.

Board of Assessment Appeals and Review Rules and Regulations, Rule IV, Section 3(A) (emphasis added). Appeals Board Rule IV, Section 3, as written, allows only a taxpayer to elect to have the determination of value of a property during an assessment appeal be based upon the current fair market value of the property. Allegheny County Administrative Code § 5-207.06 provides:

> The Appeals Board, when considering an appeal on a base year valuation, shall make no reference to ratio in its decision and shall express its decision in terms of such base year value. All appeals filed while the County is under the base year form of assessment shall be deemed to include an appeal by the taxpayer of the base year valuation. In addition, the appellant may elect to have the appeal heard solely on the issue of whether the base year value is correct or incorrect. So long as the County is under the base year form of assessment the Board may, but shall not be required to, determine the current fair market value of any property under appeal. Except to correct clerical or mathematical errors or to correct a base year value, the Board may not adjust a base year value unless it is established by clear and convincing evidence that there has been: (1) an addition or removal of improvements on the subject property; or (2) physical changes in the land of the subject property. *In no case may the Board permit an increase in the base year value founded, in whole or in part, upon a sale in a year subsequent to the established base year.*

***9** Allegheny County Administrative Code Chapter 5, Article 207, § 5-207.06(B)(7) (emphasis added). Plaintiffs interpret Allegheny County Administrative Code § 5-207.06 to prevent taxing bodies (but not taxpayers) from appealing on the basis of evidence of a sale in a year subsequent to the base year, and argue that a taxing body cannot raise, and the Appeals Board cannot consider, such a sale as evidence during a tax assessment appeal brought by a taxing body.

Plaintiffs argue that there is no conflict between the home rule laws at issue and the Second Class County Charter Law because Appeals Board Rule IV, Section 3 and Allegheny County Administrative Code § 5-207.06 pertain to the circumstances under which assessments may be appealed or increased, and have no relevance to the valuation of property "by professional assessors." This argument is without merit, as the rules at issue directly, substantially, and substantively affect how a property is valued during a taxing body's appeal of a tax assessment. *Dougherty* stands for the proposition that rules which affect how a property is valued during an assessment appeal are substantive. *See Dougherty v. Cty. of Allegheny*, No. GD 06-013464, Opinion and Order of Court at 6 (Ct. Comm. Pl. Allegheny Cnty. Sept. 5, 2006) (Wettick, J.), *aff'd* 920 A.2d 936 (Pa. Commw. Ct. 2007).

By allowing only taxpayers, and not taxing bodies, the right to have the determination of value of a property be based on current fair market value during a tax assessment appeal, Appeals Board Rule IV, Section 3 restricts taxing bodies' right, under a substantive provision of the General County Assessment Law, to have their appeals heard as if the appeal had been taken by a taxpayer. By restricting the grounds upon which a taxing body may appeal and by limiting the evidence that may be considered during a taxing body's appeal to something less than what taxpayers are entitled to, Plaintiffs' interpretation of Allegheny County Administrative Code § 5-207.06 also restricts taxing bodies' rights under this substantive provision of the General County Assessment Law. Under the Second Class County Charter Law, "a home rule charter may not give a second class county power to legislate with respect to the substantive rules governing the making of assessments and valuations of property by Certified Pennsylvania Evaluators." *Bd. of Prop. Assessment, Appeals Review & Registry of Allegheny Cty. v. Cty. of Allegheny*, 773 A.2d 816, 820-21 (Pa. Commw. Ct. 2001).

The provision of the General County Assessment Law which allows taxing bodies to appeal tax assessments "in the same manner, subject to the same procedure, and with like effect, as if such appeal were taken by a [taxpayer] with respect to his property" is plainly and palpably a substantive rule regarding the making of assessments. To the extent that Appeals Board

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Rule IV, Section 3 and Allegheny County Administrative Code § 5-207.06 restrict taxing bodies' rights, during a tax assessment appeal, under that substantive rule, to something less than a taxpayer's rights, they violate the Second Class County Charter Law. Thus, to the extent that the home rule laws at issue allow only taxpayers, and not taxing bodies, the right, during an appeal of a tax assessment, to have the property at issue assessed based on current market value of the property, these rules violate Charter Law. Accordingly, Allegheny County and the Appeals Board lacked authority to enact Appeals Board Rule IV, Section 3 and Allegheny County Administrative Code §5-207.06, and both rules are invalid, to the extent that they limit taxing bodies' appellate rights discussed above, under the Second Class County Charter Law.

***10** Furthermore, this Court finds Allegheny County Administrative Code § 5-207.06 to be invalid in a second respect. Allegheny County Administrative Code § 5-207.06 provides: "[s]o long as the County is under the base year form of assessment the Board may, but shall not be required to, determine the current fair market value of any property under appeal." Not only is this an entirely equivocal, for lack of a better term, "requirement," it also clearly violates the Second Class County Assessment Law and the holding of *Daugherty.* Under the Second Class County Assessment Law, the Board *shall*, during an appeal of a tax assessment, determine: "(1) *The current market value* for the tax year in question. (2) The common level ratio. (3) The fair market value, as determined in accordance with section 402 of the act of May 22, 1933 (P.L. 853, No. 155), known as "The General County Assessment Law."" 72 P.S. § 5452.10 (emphasis added). Under *Dougherty*, as discussed above, as well as this Court's holding in the present case, the Second Class County Assessment Law requires that the Board *must* determine the current market value of a property under appeal where an appellant, whether taxpayer or taxing body, elects a current market value methodology on appeal. *See Daugherty v. Cty. of Allegheny*, No. GD 06-013464, Opinion and Order of Court at 6 (Ct. Comm. Pl. Allegheny Cnty. Sept. 5, 2006) (Wettick, J.), *aff'd* 920 A.2d 936 (Pa. Commw. Ct. 2007). Thus, in such a scenario, the Board is absolutely required to determine current fair market value of the property under appeal, and has no discretion as to whether or not it makes such a determination. The aforementioned excerpt of Allegheny County Administrative Code § 5-207.06 gives the Board putative discretion to not do so, and it thus violates the Second Class County Assessment Law. Accordingly, under the same reasoning discussed above, the provision of Allegheny County Administrative Code § 5-207.06 which provides that "[s]o long as the County is under the base year form of assessment the Board may, but shall not be required to, determine the current fair market value of any property under appeal," violates the Second Class County Assessment Law and the Second Class County Charter Law, and is thus invalid.

Accordingly, to the extent Plaintiffs' Complaint integrally relies upon the Defendants' failure to abide by, or adhere to, Appeals Board Rule IV, Section 3 and Allegheny County Administrative Code §5-207.06, the Defendants' demurrer is sustained.

Having determined that the statutory language found in both the County Code and the Board's Rules which, Plaintiffs complained, had been systemically ignored by the Defendants, was not, in fact, lawfully enacted, I perceive no remaining statutory authority requiring Defendants to enforce, abide by, or adhere to such provisions, or to otherwise refrain from appealing recently sold properties, and/or utilizing recent sales or current market value to "reverse engineer," through application of the common level ratio, a base year assessed value. Notwithstanding this conclusion, I do recognize Plaintiffs' more substantive constitutional uniformity contentions even when divorced from the statutory violation context within which Plaintiffs framed the claims set forth in their Complaint.[10] Because I perceive this constitutional issue as the most significant substantive question intimated by Plaintiffs' Complaint, and one that will, perhaps, be of interest to the appellate court[s] on appeal, I offer the following.

Even if I were to conclude that the Defendants were bound by the language in the County Code and the Board Rules, which putatively prohibit taxing bodies from appealing tax assessments based upon "current market value," I would ultimately conclude, based upon the allegations and averments presently set forth in Plaintiffs' Complaint, that: 1) the Defendants' failure to adhere to, or enforce, such language does not give rise to a cognizable lack of uniformity constitutional violation claim, and 2) adherence to, or enforcement of, such language would create a substantially higher likelihood of a genuine lack of uniformity constitutional violation.

E. Uniformity Analysis under the Pennsylvania Supreme Court's Holding in *Valley Forse v. Upper Merlon*, 163 A.3d 962 (Pa. 2017)

***11** Although not explicitly stated in the Plaintiffs' Complaint or Brief in Response to Defendants' Preliminary Objections, this Class Action Complaint may be properly viewed as a reaction or response to the Supreme Court's recent decision in *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District*, 163 A.3d 962 (Pa. 2017). Whether prompted by *Valley Forge* or not, Plaintiffs appear to rely heavily upon this recent decision of the Supreme Court, suggesting that the case constitutes a model that this Court might apply to its uniformity analysis. I have reviewed *Valley Forge* and, of course, recognize its authority. I conclude, however, that Plaintiffs' attempt to extend the holding and rationale of *Valley Forge* to the facts of this case is misplaced, unwarranted, and inappropriate."[11] The Supreme Court's recitation of the facts in *Valley Forge* is informative:

The School District decided to appeal the assessments of some of the properties within its boundaries. To this end, it retained Keystone Realty Advisors ("Keystone"), a private firm, to advise it as to which properties should be targeted for appeal. On Keystone's recommendation, the School District concentrated solely on commercial properties, including apartment complexes. They did so because these properties' values were generally higher than those of single-family homes, and hence, raising their assessments would result in a greater tax-revenue increase than doing the same with under-assessed single-family homes, including those which were under-assessed by a greater percentage. Another alleged factor motivating the decision was that most such homes are owned by School District residents who vote in local elections, and it would be politically unpopular to appeal their assessments.

Valley Forge, 163 A.3d at 966 (footnote omitted). The Supreme Court summarized the plaintiffs' claims, and remedies sought, as follows:

> [T]heir claims were directed to an overall strategy on the part of the School District to discriminate against commercial properties as a group by targeting them for administrative appeals while ignoring lower assessment ratios among single-family homes… Appellants [/Plaintiffs] therefore sought a declaration that the School District's actions comprised an unconstitutional applications of §8855, as well as an injunction preventing the district from continuing to engage in the alleged pattern of selective and discriminatory application of that statute.

163 A.3d at 967 (reference to complaint pages, paragraphs, and footnote omitted).

The *Valley Forge* Common Pleas Court sustained the defendants' preliminary objections and dismissed the complaint. The Commonwealth Court affirmed, holding, in part, that "equalization is *not* required across all property sub-classifications" *Valley Forge*, 163 A.3d at 968.

After first dismissing the defendants' arguments that the plaintiffs failed to exhaust statutory remedies, the Supreme Court in *Valley Forge* addressed the question of substantive tax uniformity. The Supreme Court began by clarifying what it viewed as a misunderstanding by the lower courts of its prior holding in *Downingtown Area Sch. Dist. v. Chester Cty. Bd. of Assessment Appeals*, 913 A.2d 194 (Pa. 2006). Following that review, the Court stated:

> ***12** In review of the above, we 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.

Valley Forge, 163 A.3d at 975. Applying this principle to the case before it, the Supreme Court stated:

> Here, Appellants[/Taxpayers] argue that the School District has undertaken an approach which systematically treats commercial properties differently from other types of parcels, most notably single-family homes. They assert that, while 80 percent of such homes in the district are under-assessed —— and that the assessment ratio of many of those homes departs from the [common level ratio] by an even greater percentage than the assessment ratios of Appellants' [Taxpayers'] properties —— the School District has chosen, for financial and political reasons, to ignore single-family homes and concentrate only on commercial properties.

163 A.3d at 975 (bracketed language added). The Supreme Court then goes on to address and dismiss each of the defendants' remaining arguments in support of their preliminary objections to the plaintiffs' complaint; however, notably, the Court near its summation states as follows:

> 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 or the residency status of its owner[19]. Such methodologies are not presently before the Court.

Valley Forge, 163 A.3d at 989.[12] Finally, the *Valley Forge* Court explicitly constrained its holding as follows:

The particular appeal policy employed by a taxing district lies within its discretion. Our task is limited to enforcing the constitutional boundaries of any such approach, and our holding here is limited to the conclusion that the appeal policy Appellants[/Plaintiffs] have alleged —— in terms of its classification of properties by type and/or the residency status of their owners —— transgresses those boundaries.

163 A.3d at 980.

Upon review and careful consideration of the Supreme Court's analysis and holding in *Valley Forge*, I do not conclude that its holding is applicable to the instant matter. First, and glaringly distinct, is the utter absence of any alleged political motivation or other improper motive by the taxing bodies in this case. While no particular motivation is explicitly asserted, Plaintiffs, at best, appear to contend that it is the Defendants' intention to generate greater tax revenue through what they characterize as a non-uniform application of the tax assessment process. I discern nothing in the analysis or holding of *Valley Forge* to suggest that taxing bodies and municipalities may not exercise their authority and discretion within the assessment process to efficiently, effectively and, perhaps, even aggressively seek to generate greater tax revenue, as long as their conduct does not surpass constitutionally permissible boundaries. Here, there is no allegation that any real sub-classes are even created. To the extent a sub-class might be rather artificially defined as the class of "recently sold properties," such a class can hardly be perceived as the victim of either political motivations or other inappropriate targeting of any impermissible type. Indeed, the *Valley Forge* Court appears to expressly validate the use of a monetary threshold (or, even, "some other selection criteria") if it were implemented without regard to the type of property in question or the residency status of its owner.

***13** In this case, the taxing bodies' decision to appeal only those properties that are recently sold cannot be properly described as, in any way, improperly motivated or targeted. Although Plaintiffs may contend that every not-recently-sold property within the County is under-assessed (at least in comparison to the recently-sold property), evidence of this insinuated fact is not always as readily available. On the other hand, evidence that any individual recently sold property is under-assessed in the light of the recent sale price of that precise property for substantially more than its assessed value is always readily available. The taxing bodies are simply taking appeals where there exists readily available evidence to prove their case. The taxing bodies are not unfairly focusing on, or targeting, a particular class or type of property owner. Rather, they are doing what most law students are trained to do in law school. The Defendants' lawyers are advancing arguments where the evidence supports their claims and not advancing arguments where the evidence is quite arguably insufficient to support an argument or claim.

The Defendants' alleged conduct in this case appears to be, at its worst, no more than the utilization of precisely the type of monetary threshold or "other selection criteria" sanctioned by *Valley Forge.* In any case, however the detailed analysis of the Supreme Court in *Valley Forge* might be most properly construed, in its most significant respect, the *Valley Forge* holding could be, neither more clear, nor more clearly constrained. *Valley Forge* simply does not stand for the proposition that appeal policies other than the specific types alleged by the Plaintiffs in *Valley Forge*, "in terms of its classification of properties by type and/or the residency status of their owners" violate constitutional uniformity provisions. As such, to the extent Plaintiffs' uniformity claims are, in any material respect, based upon *Valley Forge*, I conclude that they simply do not adequately state a cause of action, at least to the extent recognized by *Valley Forge* under Pennsylvania law.

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F. Uniformity Generally

In this case, Plaintiffs object to the School District's decision to appeal recently-sold properties, because Plaintiffs suggest (at least implicitly) that under a base year assessment system permitting appeals based upon current market values after the base year tends to result in owners of recently-sold properties paying a disproportionately higher property tax than similarly situated owners of not-recently-sold properties. While this may be, to some extent, true;[13] importantly, this Court notes that the Plaintiffs' argument, if valid, does not mean that owners of recently-sold properties are paying taxes that are too high; but, rather, only that owners of not-recently-sold properties may be paying taxes that are too low.

At oral argument on Defendants' preliminary objections, counsel for Plaintiffs repeatedly expressed frustration that the County fails to conduct regular, county-wide reassessments.[14] This frustration is understood. Certainly, the risk of non-uniformity increases when county-wide reassessments do not occur on a regular basis. However, no party is requesting that a county-wide reassessment be ordered, and the Court is not inviting such a request, as the Court sees no evidence of its necessity established by the pleadings filed to date. Rather, Plaintiffs request that taxing bodies be prohibited from challenging the assessed value of the taxpayer's property based upon evidence of current market value. It is, however, this current market value evidence that, perhaps, most accurately informs the question of what amount provides insight into the actual amount any individual property owner/taxpayer should be paying.

Plaintiffs' argument that the practice of permitting taxing bodies to appeal utilizing current market value evidence creates a lack of uniformity is only sensible if you accept a premise which the Plaintiffs appear to be, quite understandably, unwilling to state too loudly. That premise appears to be that property taxes should "uniformly" coalesce around some goal other than accurate assessed values of individual properties.[15] More specifically, Plaintiffs essentially argue (at least in relation to appeals that might, otherwise, be taken by the taxing bodies) that the assessed values should coalesce (in fact, remain static) around the base year assessed values regardless of actual changes in fair market values over time. The common level ratio will, in some measure, smooth the lack of uniformity between recently sold properties (assessed based upon current market values) and not recently sold properties (assessed at base year assessed values) but only where the recently sold properties experience a change in value comparable to the county-wide average. But the common level ratio will not remedy the lack of uniformity that will naturally develop as a result of individual properties that continue to be taxed pursuant to the base year assessed value but experience actual change in value at a pace materially different from one another or materially different from the county-wide average. Even recognizing this limitation of the common level ratio's effectiveness, not permitting taxing bodies to appeal based upon actual current fair market value with respect to recently sold properties will only tend to increase a lack of uniformity that coalesces around accurate assessed values.

***14** More troubling, Plaintiffs' stated position not only tends to reduce the uniformity of the substantive outcome of the tax assessment system (i.e. the actual assessed values assigned to properties) but it explicitly describes and embraces a patent and express lack of uniformity regarding the process of the system, to the extent that it countenances, approves of, and advances the notion of unequal appellate rights for opposing parties. If the Defendants were to do, as Plaintiffs request this Court command them to do, and abide by or adhere to the Administrative Code and the Board Rules, as written, which purport to limit taxing bodies' right to appeal based upon current market valuation following a recent sale, (where taxpayers do enjoy such a right) such a practice would not only result in a substantial and material lack of uniform opportunity for both parties in this case to seek judicial relief, but it would also, in a material respect, up-end fundamental notions of justice and fair play in our court system. It is simply not possible for this Court to conclude that in order to arrive at a constitutionally uniform system of property tax assessment, the Court must apply intentionally non-uniform procedural rules to the parties respecting their fundamental rights of appeal and redress respecting issues as substantive and controlling as the actual current market value and assessed value of taxable properties. If the Plaintiffs are correct, and this system, as presently employed, creates any degree of non-uniformity, the solution is not to declare that only one side to a legal dispute maintains appellate rights, and thereby impose a procedural lack of uniformity on top of a purportedly existing substantive lack of uniformity.

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It is, of course, not lost on the Court that the current market value of all properties within the County will not rise and fall equivalently. Some neighborhoods will increase in value more quickly than others, some neighborhoods will perhaps decrease in value over time. Individual properties for very specific, individualized and idiosyncratic reasons may increase or decrease in value. There will, perhaps, always be instances of peculiarly high or low property values which any reasonable and uniform system of property assessment may at times experience in the moment. And, at times, this dynamic may devolve so far as to give rise to an unacceptable lack of uniformity. It cannot be said, however, even in that situation, that it must devolve. First, the taxing bodies could attempt to appeal all of the not-recently-sold properties, and if successful, maintain a "more perfect uniformity." Although to do so would undoubtedly be exorbitantly costly, require enormous amounts of manpower, perhaps be impossible in the end, and very arguably not be worth the costs involved in light of the potential value to be gained (considerations seemingly recognized in *Valley Forge*). Accordingly, the taxing bodies would not likely make the investments necessary to individually challenge the (perhaps nominally under-) assessed values of not-recently-sold properties. In any case, the Defendants' conduct here, of attempting to appeal an assessed value of a property based upon recently available evidence in the form of a recent sale, far from creating a lack of uniformity, tends, rather, to drive the system closer to uniformity - if the goal is that the uniformity coalesce around appropriate and accurate property tax valuations. The fact is there may be an unavoidable and inherent risk (perhaps even certainty) of a degree of non-uniformity baked into any property tax assessment system - a necessary "roughness" of uniformity may be all that is possible. *See Clifton v. Allegheny Cty.*, 969 A.2d 1197, 1213-14 (Pa. 2009) ("The Pennsylvania Constitution requires that property valuations be based, *as nearly as practicable*, on the relative value of each property to market value") (emphasis added). In any event, this Court respectfully rejects the position of the Plaintiffs which essentially invites the Court to conclude that because taxing bodies elect to take appeals in cases where properties were recently sold (i.e. where there exists evidence of an improper assessed value) or take appeals on the basis of current market value (to prove an improper assessed value), but do not take appeals where properties were not recently sold, (where evidence is arguably not readily available, or not at all available, to prove improper assessed value), that the taxing bodies are either engaging in constitutionally impermissible non-uniform conduct, and/or contributing to property tax assessments that are, themselves, substantively non-uniform. The solution is not to create a patent, express and explicit lack of procedural uniformity respecting the appellate rights of tax payers versus taxing bodies.

G. Failure to Join Indispensable Parties

***15** In support of its Preliminary Objection based upon Plaintiffs' failure to join indispensable parties, the Defendants note that the Plaintiffs' remedy seeks to extinguish rights enjoyed by the majority of the taxing authorities in Allegheny County without joining them to this litigation. In particular, Defendants note that "taxing authorities including school districts have statutory and constitutional due process rights in the real estate tax assessment appeal process and taxing authorities must be included in this litigation as additional defendants as a result" citing 72 P.S. §5435.706, and *Richland School District v. Cambria County Board of Assessment Apeals*, 724 A.2d 988 (Pa. Commw. Ct. 1999). Defendants further note that in a prior class action property tax assessment appeal case brought in Allegheny County, the Honorable R. Stanton Wettick, Jr. required that a core defense committee be formed to represent the interests of all taxing jurisdictions implicated in the litigation. *See Dunn v. Board of Property Assessment, Appeals and Review of Allegheny County*, 877 A.2d 504 (Pa. Commw. Ct. 2005).

In response to Defendants' Preliminary Objections asserting that the Plaintiffs failed to join indispensable parties, Plaintiffs state (albeit, in my judgment, unpersuasively) in relevant part:

> The School District's indispensable party objection is without merit. Plaintiffs have been harmed only by the Defendants named in the Complaint and thus lack standing to maintain a class action against any of the other school districts and taxing authorities in Allegheny County. Under Pennsylvania law, it is firmly established that a plaintiff in a class action who has not suffered an injury from the challenged conduct of a defendant cannot maintain a class action against that defendant. *See Nye v. Erie Insurance Exchange*, 470 A.2d 98 (Pa. 1983) (holding where the complaint failed to allege the plaintiff had been aggrieved by the conduct of certain defendants, plaintiff lacked standing to maintain class action against such defendants); *McMonagle v. Allstate Insurance Company*, 331 A.2d 467 (Pa. 1975) (holding a plaintiff in a class action who has not suffered an injury from the challenged conduct of a defendant cannot maintain a class action against that defendant).

Pls.' Br. in Opp'n. 30. Here, however, Plaintiffs seek a declaration from this Court concluding that because of Defendants' failure to enforce provisions of the County Code and Board Rules, (both of which would be applicable to all taxing authorities throughout the County) the Defendants have violated the Uniformity Clauses of the Pennsylvania Constitution and the United States Constitution. This broad relief plainly implicates the rights of other taxing bodies within the County. For this reason, even if the Defendants' Preliminary Objections did not result in the dismissal of the Plaintiffs' Complaint on more substantive grounds as discussed above, I would conclude that the Plaintiffs have failed to join indispensable parties, specifically each of the taxing bodies within the County whose appellate rights would be directly impacted by the relief sought by the Plaintiffs in this case.

H. Preliminary Objections Filed on Behalf of Remaining Defendants, Allegheny County Board of Property Assessment Appeals and Review, Allegheny County, and City of Pittsburgh

The Board, the County, and the City joined in the Preliminary Objections filed by the School District in their entirety; accordingly, the Court's analysis set forth above, and its Order respecting the same, applies equally to the Preliminary Objections filed on behalf of the Board, the County, and the City.

In addition to those Preliminary Objections advanced by School District, both the County and the City further preliminarily object in the nature of a demurrer arguing that there exists no actual controversy between either the County or the City and Plaintiffs. Both argue that neither the County nor the City is adverse to the Plaintiffs in any material respect. While the Court recognizes that neither the County nor the City is a party to the current appeal of Plaintiffs' tax assessment, for the same reasons I indicated that I would sustain the School District's Preliminary Objection based upon failure to join indispensable parties (i.e. because the Plaintiffs seek declaratory judgment that would affect both the County's and the City's rights in a great many cases) this Court similarly overrules the County's and the City's Preliminary Objection on this basis.

***16** The City further contends that because of a Resolution, specifically City of Pittsburgh Resolution No. 2016-0079, passed by City Council, the City is not presently capable of taking an appeal in the manner complained of by the Plaintiffs. The referenced City Council Resolution merely constitutes a temporary two-year moratorium on such appeals and provides no assurance of the permanence of this policy. As such it is, in no meaningful respect, dispositive of the legal issues implicated by the Plaintiffs' Class Action Complaint. Accordingly, this Preliminary Objection is overruled.

Finally, the City asserts that the Plaintiffs have only stated a potential harm, not an actual harm because their property tax assessment appeal has not been finalized. This argument is sufficiently similar to the School District's argument that Plaintiffs are required to administratively exhaust statutory remedies before seeking the equity jurisdiction of this Court and is overruled based upon the Court's analysis respecting the same set forth above.

ORDER OF COURT

AND NOW, this 29th day of March , 2018, for all of the reasons discussed in the Court's Opinion of the same date, it is hereby ORDERED that:

1) Defendants' Preliminary Objection asserting that Plaintiffs have an adequate remedy at law, and that equity jurisdiction is inappropriate, is overruled.

2) Defendants' Preliminary Objection asserting that Plaintiffs have failed to exhaust an administrative remedy is overruled.

3) Defendants' Preliminary Objection asserting that there are zero members of the purported class articulated by Plaintiffs is overruled.

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4) Defendants' Preliminary Objection asserting that tax refunds may not be sought in a class action is, to the extent that the Plaintiffs' prayer for relief might be interpreted to request such a declaration, and/or to request the grant of such a refund, sustained.

5) Defendants' Preliminary Objection in the nature of a demurrer asserting that Appeals Board Rule IV, Section 3 and Allegheny County Administrative Code §5-207.06, as written, violate the law, and that Plaintiffs' Complaint is thus legally insufficient, is sustained. Plaintiffs' Complaint is dismissed.

6) Defendants' Preliminary Objection in the nature of a demurrer is sustained to the extent Plaintiffs' uniformity claims are, in any material respect, based upon *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District*, 163 A.3d 962 (Pa. 2017).

7) Defendants' Preliminary Objection asserting that Plaintiffs failed to join indispensable parties is sustained.

8) The City's and the County's Preliminary Objections in the nature of a demurrer asserting that there exists no actual controversy between either the County or the City and Plaintiffs are overruled.

9) The City's Preliminary Objection asserting that the City is not capable of taking an appeal in the manner complained of by the Plaintiffs due to Pittsburgh Resolution No. 2016-0079 is overruled.

10) The City's Preliminary Objection asserting that Plaintiffs have only stated a potential harm, and not an actual harm, is overruled.

BY THE COURT:

<<signature>>

COLVILLE, J.

Footnotes

1 In this case, 2012, for the 2013 tax year assessment.

2 *Clifton v. Allegheny County,* 969 A.2d 1197, 1204 (Pa. 2009).

3 Although it is not perfectly clear whether Plaintiffs' lack of "uniformity claims" are, in fact, more statutorily based inasmuch as they arguably rise and fall solely upon Plaintiffs' assertion that Defendants are merely violating the County Code and the Board Rules (and that the general lack of uniformity claim is, thereby, derivative).

4 *Valley Forge* was principally concerned with the application of appeal efforts targeting a specific class of properties, i.e. commercial as opposed to residential, a factor that is not present here.

5 The Court notes that, in any case, the class description as set forth in the Plaintiffs' Complaint may be properly amended and modified in later proceedings if warranted or necessary.

6 To the extent that the Second Class County Assessment Law and the General County Assessment Law were enacted by the Legislature to specifically address assessment practice in counties of the second class, I find it confusing, if not confounding, that preemption would not apply where a second class county has enacted rules that contradict the Second Class County Assessment Law and the General County Assessment Law. If a state law is deemed to have statewide preemptive effect if it is generally intended for statewide application, why would a state law, when it is specifically targeted to a specific county (here, Allegheny County as the Commonwealth's only current second class county), have less, rather than more, preemptive effect to actions taken in the specifically targeted county? The Second Class County Assessment Law's lack of preemptive effect over actions taken in counties that are not of the second class is perfectly understandable, but its lack of preemptive effect in Allegheny County, the one county the law specifically

targeted, is not. In any case, because I find that the rules at issue are invalid for other reasons, this consideration does not inform the Court's ultimate resolution of this issue.

7 Former Appeals Board Rule IV. This Rule was amended following Judge Wettick's decision in *Daugherty*, which was affirmed by the Commonwealth Court.

8 In. Allegheny County, the "predetermined ratio" is nearly never (if ever) used. Pursuant to Judge Wettick's September 3, 2015 Order of Court, the Allegheny County Board of Assessment Appeals and Review is required to apply the common level ratio, regardless of whether either party seeks its application, to its findings of fair market value "where the appellant elects a current market value methodology." *S&D Shah Corp. v. Allegheny Cty. Bd. of Prop. Assessment, Appeals and Review*, No. GD 15-013517, Order of Court (Ct. Comm. Pl. Allegheny Cnty. Sept. 3, 2015) (Wettick, J.). I note the Court's reference to "appellant," not "taxpayer."

9 It is entirely arguable that these provisions of the Second Class County Assessment Law standing on their own, at least implicitly, confer this same right to taxing bodies. The Court finds notable that Judge Wettick, in *Clifton v. Allegheny Cty.*, explained that appeals taken by property owners or taxing bodies are governed by a statutory scheme, i.e. 72 P.S. § 5452.10, that is different than the statutory scheme that applies to reassessments initiated by the Office of Property Assessments. *Clifton v. Allegheny Cty.*, No. GD 05-028638; No. GD 05-028355, Opinion and Order of Court at 21-22 (Ct. Comm. Pl. Allegheny Cnty. Mar. 15, 2006) (Wettick, J.). There exists no principled reason to conclude that this explanation cannot readily and reasonably be interpreted to provide that the provisions of the Second Class County Assessment Law at issue inform not only a taxpayer's substantive rights during an appeal of a tax assessment, but also the rights of taxing bodies. Judge Wettick further explained that, where the Board had considered sales which occurred after the base year in tax assessment appeals brought by taxing bodies, the "use of current sales in an appeal process is also consistent with the Second Class County Assessment Law." *Clifton*, Opinion and Order of Court at 22. This analysis seems to be utterly uninformed by whether the appellant is taxpayer or taxing body.

10 I use the word "contentions" purposefully. I do not find that the Plaintiffs have adequately asserted genuine "stand-alone" uniformity claims or causes of action independent from the statutory violation claims asserted by the Plaintiffs that are addressed and dismissed above. However, because these contentions arguably constitute the substantive gist of the Plaintiffs' Complaint, I feel obliged to address them. Moreover, while not explicitly or expansively preliminarily objected to, Defendants (the School District, in particular) do raise arguments respecting the uniformity contentions in more general terms, including, even, when divorced from the statutory violation context of Plaintiff's Complaint. *See* School District's Br. 10-11, respecting the impact of *Valley Forge.*

11 I explicitly note that to the extent *Valley Forge* provides direction to this Court respecting the question of whether Plaintiffs must exhaust statutory remedies before seeking the equitable jurisdiction of this Court, *Valley Forge* and *Kowenhoven*, upon which it draws heavily, do support the Plaintiffs' contentions, as discussed above. My reticence to apply the directives of *Valley Forge* to the instant matter is more limited and exists only with respect to the substantive uniformity analysis.

12 Footnote 19 in *Valley Forge* stated: "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.")

13 Although not necessarily.

14 Trienniel reassessments are putatively required to be conducted. 72 P.S. § 5020-401.

15 Quite arguably, taken to its admittedly most unreasonable extreme, the logic of Plaintiffs' argument would presumably embrace the "uniformity" provided by a real estate tax assessment system that imposed a flat $1,000 tax on every property in the County irrespective of its actual value. (Except that Plaintiffs presumably would assert that taxpayers, not taxing bodies, may appeal based upon current market value).

End of Document

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