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49 MAP 2016

IN THE SUPREME COURT OF PENNSYLVANIA

No. 49 MAP 2016

VALLEY FORGE TOWERS APARTMENTS N, LP et al.,
MORGAN PROPERTIES ABRAMS RUN OWNER LP and KBF ASSOCIATES LP, et al

v.

UPPER MERION AREA SCHOOL DISTRICT and KEYSTONE REALTY ADVISORS, LLC,
Appeal of: Morgan Properties Abrams Run Owner LP; KBF Associates, LP

BRIEF OF APPELLANTS MORGAN PROPERTIES ABRAMS RUN OWNER LP and KBF ASSOCIATES LP

On Appeal from the September 10, 2015 Opinion and Order of the Commonwealth Court of Pennsylvania in Appeal No. 1906 C.D. 2014 Affirming the Judgment of the Court of Common Pleas of Montgomery County at No. 2014-09870

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Dated: July 8, 2016

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STATEMENT OF JURISDICTION

This Court has jurisdiction to review this matter pursuant to 42 Pa. C.S. § 724(a), Pennsylvania Rule of Appellate Procedure 1112(a), and this Court's Order granting allowance of appeal dated April 26, 2016. The Commonwealth Court had jurisdiction under 42 Pa. C.S. §§ 762 & 5105 and Pa. R.A.P. 341 and 901. The October 14, 2014, Order of the Court of Common Pleas was final pursuant to Pa. R.A.P. 341(b)(1). *Old Forge Sch. Dist. v. Highmark, Inc.,* 592 Pa. 307, 316, 924 A.2d 1205, 1211 (2007) (citing *Gasbarini's Estate v. Medical Center of Beaver County, Inc.,* 487 Pa. 266, 270, 409 A.2d 343, 345 (1979)).

ORDER IN QUESTION

The Order in Question is the Commonwealth Court's Order of September 10, 2015, stating: "[T]he Montgomery County Common Pleas Court's October 9, 2014 order is affirmed." *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.,* 124 A.3d 363, 374 (Pa. Commw. 2015) (a copy of which is attached as Appendix A).

The underlying October 9, 2014 Order of the Court of Common Pleas of Montgomery County, Moore, J. (a copy of which is attached as Appendix B), states: "[T]he Preliminary Objections are sustained and the Complaint is

dismissed with prejudice." App. B. The trial court's opinion, filed on January 2, 2015, is attached as Appendix C.

STATEMENT OF SCOPE AND STANDARD OF REVIEW

This Court's review of the Order sustaining Defendants' preliminary objections in the nature of a demurrer is *de novo* and plenary. *Sernovitz v. Dershaw*, 127 A.3d 783, 788 (Pa. 2015) (citing *Luke v. Cataldi*, 593 Pa. 461, 468 n. 3, 932 A.2d 45, 49 n. 3 (2007)). A court may sustain preliminary objections only when, based on the facts pleaded, "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish a right to relief." *Hospital & Healthsystem Assoc. of Pa. v. Department of Pub. Welfare*, 585 Pa. 106, 888 A.2d 601 (2005). "[T]he court must accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts." *Mazur v. Trinity Area Sch. Dist.*, 599 Pa. 232, 241, 961 A.2d 96, 101 (2008) (citations omitted).

STATEMENT OF QUESTIONS INVOLVED

Defendant the Upper Merion Area School District deliberately chose commercial properties for selective assessment appeals, but did not appeal assessments of any single-family-home properties, although the latter are significantly underassessed. The Uniformity Clause of the Pennsylvania Constitution prohibits disuniformity in taxation. Is the School District's decision to appeal property assessments insulated from review because, *inter alia*, it has a statutory right to file appeals and it claims an economic motivation for its appeals?

Suggested Answer: No.

STATEMENT OF THE CASE

I. BRIEF PROCEDURAL HISTORY

Plaintiffs commenced this civil action by filing a Complaint in the Montgomery County Court of Common Pleas on May 2, 2014. (R.10-38a.) Count I sought injunctive relief against the Upper Merion Area School District (the "School District") under the Uniformity Clause of the Pennsylvania Constitution, Pa. Const. art. VIII, § 1. (R.30-33a.) Count IV requested a

declaratory judgment that the School District's actions violate the Uniformity Clause. (R.36a.)[1]

On May 28, 2014, Defendants filed preliminary objections to the Complaint. (R.39-70a.) On October 9, 2014, the Court of Common Pleas, Bernard M. Moore, J., sustained Defendants' preliminary objections and dismissed the Complaint with prejudice. App. B. Plaintiffs[2] timely filed a notice of appeal on October 27, 2014. (R.157-62a.) The Court of Common Pleas issued its opinion on January 2, 2015. App. C.

On September 10, 2015, the Commonwealth Court issued its decision affirming the Trial Court. App. A. Plaintiffs[3] timely filed a petition for allowance of appeal on October 13, 2015. This Court granted the petition on April 26, 2016.

[1] Counts II and III were asserted against Keystone Realty Advisors, a consultant hired by the School District to help select properties for appeal. The dismissal of those counts was not appealed to this Court.

[2] Plaintiff Valley Forge Towers Apartments N, LP voluntarily discontinued its claims against Defendants on July 1, 2014. (R.162a.) It is not a party to this appeal.

[3] Plaintiffs Gulph Mills Village Apartments LP and The Lafayette at Valley Forge LP voluntarily discontinued their appeals in Commonwealth Court on June 26, 2015. (R.7a.) They are not parties to this appeal.

II. FACTUAL BACKGROUND

A. Real Property Taxes In Montgomery County And The School District

Montgomery County has not conducted a countywide reassessment since 1996. (R.20a.) Without a countywide reassessment, the Montgomery County Board of Assessment ("County Board") can reassess a property only when the property has been subdivided or has undergone a physical change, such as new construction or the removal of existing improvements. (R.20a.) Any other reassessments of individual properties would constitute unlawful spot assessments.[4]

In the twenty years since the last countywide reassessment, changing perceptions regarding the relative attractiveness of different neighborhoods and various other market forces have caused the value of different parcels of property within Montgomery County to change dramatically and unevenly. (R.20a.) The county uses the common level ration ("CLR") to adjust for changing property valuations when properties are reassessed, but it does not

[4] *See infra* pp. 34-37, for a description of how spot assessments violate both 53 Pa. C.S. § 8843 and the Uniformity Clause.

affect existing assessments.[5] The CLR for Montgomery County was 58% in 2011, 62% in 2012 (R.21a), 57.5% in 2013, and 56.2% for 2014.[6]

There are approximately 9,850 single-family homes located within the boundaries of the School District. (R.20a.)

B. Plaintiffs' Properties

Plaintiffs own large multi-family apartment buildings located within the School District's boundaries. (R.8a.) These include the following properties:

Owner/ Property	Number of Units	Assessed Value
Abrams Run 90 Bill Smith Blvd.	192	$11,311,920
KBF 600 S. Gulph Rd.	770	$31,312,020
Gulph Mills Village 649 S. Henderson Rd.[7]	328	$12,500,000

[5] The CLR is supposed to be "the ratio of assessed value to market value used generally in the county." *Clifton v. Allegheny Cty.*, 600 Pa. 662, 692, 969 A.2d 1197, 1215 (2009). However, the empirical research included in the Complaint suggests that the CLR might not be functioning correctly in Montgomery County as the overwhelming majority of single family homes are assessed below the CLR. *See infra* p. 39.

[6] Pa. Dept. of Revenue, Common Level Ratios (CLR) Real Estate Valuation Factors for Montgomery County, www.revenue.pa.gov/FormsandPublications/FormsforIndividuals/Documents/Realty%20Transfer%20Tax/clr_factor_historical.pdf.

[7] Gulph Mills Village, Lafayette at Valley Forge, and Valley Forge Towers Apartments were Plaintiffs in the original complaint in this action, but are not parties to this appeal. *See supra* notes 1-2.

Owner/ Property	Number of Units	Assessed Value
Lafayette at Valley Forge 967 Penn Circle	603	$22,573,230
Valley Forge Towers Apartments 3000 Valley Forge Circle	242	$14,803,000

(R.24-26a, 28-29a.)

Plaintiffs pay real property taxes to the School District each year. (R.14-15a.) These taxes are based on the respective assessed value of each property, as determined by the County Board.

C. The School District's Discriminatory Assessment Appeals

The School District has implemented a systematic scheme to raise property tax receipts by selectively appealing the assessments of commercial properties, while ignoring thousands of undervalued single-family homes located in the District. At a meeting on June 5, 2011, the School District voted to hire a consultant to target properties for appeals. (R.22a.)

In furtherance of its scheme, the School District appealed the assessments of Plaintiffs' properties, as well as other large commercial properties. (R.21-23a, 25-29a.) The School District sought to increase the assessment for Plaintiffs' properties – as well as other high-value commercial

properties – to equal or exceed the Montgomery County CLR. (R.26-28a, 30a.) In each case, the County Board declined to increase the assessments, and the School District appealed the Board's decision to the Court of Common Pleas. (R.25a, 27-29a, 24a, 26-29a.) Critically, between 2011 and 2013, the School District did not appeal the assessments of any single-family residences no matter how undervalued. (R.21a.) In making its classification of which properties to appeal and which not, the School District does not appear to have relied on any standards or criteria, other than to consider only large commercial properties. (R.23a.)

Econsult Solutions, Inc. ("ESI"), a nationally recognized consulting firm, conducted a statistical analysis of the assessment-to-market-value ratios of the single-family homes located within the boundaries of the School District. (R.21a.) ESI found the vast majority of single-family homes in the School District are underassessed as compared to other real property in the School District, and as compared to the Montgomery County CLR. (R.21a.) Approximately 80.6% of all single-family homes in Upper Merion have an assessment-to-market value below the 2012 CLR for Montgomery County. (R.14-15a, 21a.) Nonetheless, the School District did not appeal the assessments of any of the 9,855 single-family homes in the District in 2011 or 2012. (R.21a.)

By pursuing appeals only against commercial-property owners, the School District is imposing a disproportionate share of the cost of government on a small number of owners of large, high-value commercial properties. (R.31a.) The district's selective-appeal scheme seeks to increase the assessment-to-market-value ratio for Plaintiffs' properties (as well as other high-value commercial properties) to equal or exceed the Montgomery County CLR, but not the assessments of any single-family homes with disproportionately low assessment-to-value ratios. (R.26-28a, 30a.) In so doing, the District's scheme deliberately seeks to impose a higher effective tax rate – and an accordingly larger portion of the tax burden – on those targeted commercial properties, in contrast to single-family homes. (R.21-24a.)

III. COMMONWEALTH COURT DECISION

The Commonwealth Court's decision affirming the dismissal of Plaintiffs' claims is based on multiple erroneous conclusions of law.

First, the Commonwealth Court held that the School District could classify real estate by use, treating commercial properties differently from residential properties. The court stated, "the Uniformity Clause does not require equalization across all sub-classifications of real property (for example, residential versus commercial)." App. A at 4 (quoting *In re Springfield School Dist.* ("*Springfield II*"), 101 A.3d 835, 849 (Pa. Commw. 2014)). While the

Commonwealth Court cited *Downingtown Area Sch. Dist. v. Chester Cty. Bd. of Assessment Appeals,* 590 Pa. 459, 467,913 A.2d 194 (2006), for this proposition, this is a serious misreading of *Downingtown*.[8]

Second, the Commonwealth Court refused to recognize any limits on a school district's right to appeal tax assessments, seemingly holding that a school district's right is absolute and not circumscribed by the Uniformity Clause. For purported support, the court repeated from a previous opinion their conclusion, "it is now well settled that municipal tax authorities, such as school districts, may appeal a property's assessment." App. A at 4 (quoting *Weissenberger v. Chester Cty. Bd. of Assessment Appeals*, 62 A.3d 501, 507 (Pa. Commw. 2013)). The court also asserted a purported distinction between "assessing taxes" and "exercising [a] statutory right to appeal from said assessments." App. A at 9. Plaintiffs have "*no basis* for bringing a lawsuit against [the School District]," the Commonwealth Court concluded, because "in fact [the School District] was not assessing taxes, but rather exercising its statutory right to appeal from said assessments." *Id.* Notably, the Commonwealth Court referenced no Supreme Court decision supporting that conclusion.

[8] *See infra* pp. 24-30.

Third, the Commonwealth Court concluded that the School District's actions to undermine property tax uniformity were acceptable, as it concluded that Plaintiffs had not alleged deliberate discrimination and the District had an economic motive to appeal the property tax assessment on commercial-property owners. Inexplicably, the court stated that Plaintiffs "did not allege that [the School District] selected [Plaintiffs'] properties based on their owners' lack of political power," App. A at 7, yet two pages earlier summarized Plaintiffs' allegations as including "[the School District] has failed to appeal the assessments of single family homes because many if not all are owned by residents who vote in local elections and it would be politically unpopular to appeal such voters' property assessments." App. A at 5.

Moreover, the Commonwealth Court concluded that the District's discrimination was permissible because the District asserted an economic motivation for its appeals. *See* App. A at 11. Specifically, it stated, "adopting a methodology that narrows the class of properties evaluated for appeal based on considerations such as financial or economic thresholds or by classifications of property do not as a matter of law demonstrate deliberate, purposeful discrimination." *Id.* at 5 (quoting *Weissenberger*, 62 A.3d at 508-09). The Commonwealth Court also opined that the School District's goal of

"increasing its revenue" meant that its method of identifying properties for appeal did not violate uniformity. App. A at 9.[9]

SUMMARY OF ARGUMENT

This first-of-its-kind in the Commonwealth, broad-based, empirically founded constitutional challenge demonstrates that the School District has violated its Uniformity Clause obligations to treat all real property as a single class and not to impose a greater effective property tax rate on commercial property than residential properties owned by local voters within the School District's boundaries. Rather than directly increase its tax millage to increase its tax revenues, the School District has embarked on a scheme, with the help of a consultant, to single out and selectively appeal the assessments of high-value commercial properties thought to be underassessed, such as Plaintiffs' multi-family apartment buildings, yet not appeal the assessments of the more than 9,800 single-family homes within the School District's boundaries, the

[9] The Commonwealth Court also rejected Plaintiffs' argument that the trial court erred in dismissing the Complaint based on a purported lack of administrative exhaustion. The court held that, because there was no "substantial question of constitutionality" concerning the district's right to appeal, Plaintiffs could not proceed in equity and were required to bring any claims through administrative proceedings under the Assessment Law. App. A at 13. As a result, the Commonwealth Court did not decide whether Petitioners would have an adequate remedy through the administrative appeal process if it had found a uniformity violation. *Id.* Consequently, the administrative exhaustion issue is not before this Court.

vast majority of which – as shown in a recent statistical study – are substantially under assessed. This deliberate pattern, favoring local home owners and disfavoring commercial owners by requiring them to pay more than their fair share of the cost of government, squarely violates the Uniformity Clause.

The Commonwealth Court, relying upon its own erroneous prior decisions – not the text or history of the Uniformity Clause and not this Court's precedent – grievously erred in affirming the trial court's grant of preliminary objections dismissing Plaintiffs' claims. First, there can be no question but that the text of the Uniformity Clause precludes the School District's conduct at the heart of this case. By its terms, the Uniformity Clause requires that "[a]ll taxes shall be uniform," Pa. Const. art. VIII, § 1, that is, consistent and lacking in variation. Yet, the School District's intentional pattern of appeals creates different, non-uniform effective taxes – i.e., higher effective tax rates on commercial properties, the assessments of which the School District is appealing, in contrast to the effective rate on the residential homeowners' assessments, which are deliberately not being appealed.

Second, the history of the Uniformity Clause reinforces the conclusion that the School District's discriminatory practice is unconstitutional. The Clause was added to the Pennsylvania Constitution in 1874 as part of a

broader set of equality-promoting and favoritism-prohibiting reforms to ensure that the burden of taxation does not fall on the shoulders of a disfavored group to the benefit of a preferred class. Permitting the School District's scheme to impose an additional tax burden on commercial apartment properties through assessment appeals is just the sort of favoritism the Uniformity Clause was designed to prohibit.

Third, this Court's real-property Uniformity-Clause jurisprudence, including its recent decisions in *Downingtown Area School District v. Chester County Board of Assessment Appeals*, 590 Pa. 459, 913 A.2d 194 (2006) and *Clifton v. Allegheny County*, 600 Pa. 662, 969 A.2d 1197 (2009), neither of which the Commonwealth Court followed, establish that the School District's conduct is unconstitutional. These decisions make clear that the Uniformity Clause bars government agencies from deliberately dividing real estate into different classifications, yet the School District's scheme creates just such an improper classification. Further, as a Constitutional prohibition limiting state action, this Court's precedent teaches that the Uniformity Clause's restrictions apply to a school district's decision to appeal an assessment, not only narrowly to an assessment board's setting of an assessment, as the Commonwealth Court found.

Finally, the text and history of the Uniformity Clause and this Court's prior decisions show that none of the School District' supposed justifications for its discriminatory behavior shield it from the restrictions the Uniformity Clause plainly imposes. For example, the School District's defense that it was motivated in selecting Plaintiffs' properties to increase revenue fails because, *inter alia*, (a) under this Court's real-property Uniformity-Clause jurisprudence, an economic justification is no defense to implementing subclassifications of real property; and (b) as a policy matter, permitting state actions that harm uniformity where there is an asserted economic motivation would gut the protections of the Uniformity Clause, including the prohibition on discrimination based on relative wealth. In addition, that the statute authorizing the School District to "appeal any assessment within its jurisdiction" does not include any uniformity limitation does not allow the School District to avoid its constitutional uniformity obligations in selecting properties to appeal. That position, inexplicably adopted by the Commonwealth Court, is plainly without merit because the statute must be read in conjunction with the Constitution, which is supreme. *See, e.g.*, *Amidon v. Kane,* 444 Pa. 38, 41, 279 A.2d 53, 55 (1971) ("The Constitution is in matters of state law the supreme law of the Commonwealth to which all acts of the Legislature and of any governmental agency are subordinate.").

ARGUMENT

I. THE TEXT AND HISTORY OF THE UNIFORMITY CLAUSE ESTABLISH THAT IT PROHIBITS THE SCHOOL DISTRICT'S DISCRIMINATORY SCHEME

The School District's scheme of selectively appealing the assessments of apartment properties straightforwardly violates the Pennsylvania Constitution. The School District has favored certain properties – residences owned by local voters – by refusing to challenge their assessments, to the detriment of the challenged properties, commercial apartment complexes. *See supra* pp. 5-9. Yet, the Uniformity Clause was enacted to prevent precisely this sort of inconsistent treatment and favoritism. The text and history of the Uniformity Clause prove this beyond doubt.[10]

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[10] Mindful of the framework laid out by this court in *Commonwealth v. Edmonds*, 526 Pa. 374, 390, 586 A.2d 887, 895 (1991), this Brief focuses on: (1) the text of the Uniformity Clause, (2) the history of the Uniformity Clause's enactment and its interpretation by Pennsylvania courts, and (3) relevant policy considerations.

While *Edmonds* also calls for analysis of relevant decisions from other states, Plaintiffs have not uncovered significant relevant case law from other states. This may be because most other states, unlike Pennsylvania, require more frequent broad-based reassessments and thus avoid disputes like this one where a taxing district seeks to selectively appeal the assessments of only some properties last assessed many years before. *See* Jeffrey A. Weber, *et al.*, Center for Rural Pennsylvania, Pennsylvania County Property Reassessment, at 5 (2010), http://www.rural.palegislature.us/county_reassessment_2010.pdf ("Pennsylvania is one of nine states that decentralized the property tax assessment process to the local government level."); Alan S. Dornfest, *et al.*, *State and Provincial Property Tax Policies and Administrative Practices*, 7 J. OF PROPERTY TAX ASSESSMENT & ADMINISTRATION, issue 4, at 19 (2010), *available at* https://www.iaao.org/uploads/PTAPP_2010.pdf (38 out of 41 states surveyed require reappraisal at six-year or shorter intervals). Additionally, while most states have a constitutional requirement of uniformity in taxation, only a few have provisions that closely

A. The Text Of The Uniformity Clause Establishes A General Requirement That All Taxes "Be Uniform," Not Imposed Disproportionately On One Group Of Taxpayers

The Uniformity Clause of Article VIII of the Pennsylvania Constitution requires that all taxes be imposed uniformly without discrimination.

> 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.

Art. VIII, § 1. This provision establishes as a general and absolute principle that all taxes imposed "shall be uniform." *Id.* The Uniformity Clause's broad prohibition on discrimination in taxation is unequivocal and unambiguous. *Amidon*, 444 Pa. at 47, 279 A.2d at 58 ("'This language [of the Uniformity Clause] is as broad and comprehensive as it could possibly be ….'") (quoting *Saulsbury v. Bethlehem Steel Company*, 413 Pa. 316, 196 A.2d 664 (1964)).

The word "uniform" admits no confusion. It requires consistency and a lack of variation. *See, e.g.*, BLACK'S LAW DICTIONARY 1668 (9th ed. 2009) (defining "uniform" as "characterized by a lack of variations; identical or consistent"); MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 1292 (10th ed. 1994) (defining "uniform" as "consistent in conduct or opinion; having always the same form, manner or degree; not varying or variable"). The text of the

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resemble Pennsylvania's Uniformity Clause. *See* Wade J. Newhouse, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION, 10 (1st ed. 1959).

Uniformity Clause does not limit some government actions but not others; rather it applies to all government actions. If an appeal of a property tax assessment is an act of a government agency, that appeal must be done in a manner consistent with the Constitution, including the Uniformity Clause. *See, e.g.*, *Pittsburgh Rys. Co. v. Port of Allegheny Cty. Auth.*, 415 Pa. 177, 185, 202 A.2d 816, 820 (1964) ("[A]ll acts of the legislature and of any governmental agency are subordinate to the Constitution, which is the Supreme Law of the land.") (quotation marks and citation omitted). Certainly, nothing in the text of the Uniformity Clause provides – expressly or by implication – that high-value commercial properties are an exception to the broad requirement of uniform treatment.

B. The History Of The Uniformity Clause Demonstrates That It Was Intended To Prohibit All Favoritism And Inequality In Taxation, Such As the School District's Scheme To Favor Homeowners

The history of the Uniformity Clause confirms its textual meaning: It was intended to prohibit government favoritism for or against commercial interests, such as the School District's appeals. The Constitution of Pennsylvania did not include an express requirement of uniformity in taxation until 1874, at which time the Uniformity Clause was added in its present form. *See Amidon*, 444 Pa. at 46, 279 A.2d at 58. The Uniformity Clause was enacted as part of a sweeping constitutional reform driven by concerns about favoritism

to particular classes and interests.[11] The debates of the 1872-73 Constitutional Convention confirm that the Uniformity Clause was intended to prohibit all forms of government favoritism in taxation, including discrimination based on relative wealth or corporate status.[12] As one delegate put it, the goal of the convention was to provide a government in which "laws … will operate equally and uniformly all over the State, and the advantages of which will be open alike to the rich and the poor – the many of small means and the few of larger means." VII DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA ("1873 CONVENTION DEBATES") 204 (Delegate Struthers).

Consistent with this purpose, in a statement to the citizens of the Commonwealth, the executive committee of the Convention summarized that the new Constitution prohibits "all special exemptions upon property of the same class, and all favoritism and inequality in taxation." Statement of the

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[11] *See generally* Donald Marritz, "Equality Provisions in the Pennsylvania and U.S. Constitutions: One of These Things Is Not Like the Other" *in* WHOSE CONSTITUTION IS IT ANYWAY? A PRIMER ON SELECTED TOPICS OF THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA AND THE UNITED STATES CONSTITUTION 181, 189-95 (PBI 2012).

[12] The convention debates repeatedly discuss the need for uniformity and confirm that the delegates took the burdens imposed by a mandate of uniformity in any context seriously. *See, e.g.*, II 1873 CONVENTION DEBATES 423 (Delegate Landis) (arguing against inserting "so rigid a word as uniform" into what is now Section 14 of the Pennsylvania constitution regarding the public school system).

Executive Committee, VIII 1873 CONVENTION DEBATES 751. Representative floor statements by convention delegates support the same conclusion:

- "[Taxes have been] raised in an indirect manner [from heavy taxes on corporations], and the people do not feel it, and you will never have an honest government honestly administered, until the burdens of the government are brought directly home to the people and they feel them.… I hope, therefore, that something will be done by this Convention by which unjust discriminations in taxation will no longer exist, and that just uniformity in taxation will be the rule." VI 1873 CONVENTION DEBATES 124 (Delegate Purviance); and
- "And the only object of putting the basis of taxation into the Constitution is to fix it on a basis of certainty and equality, and take it out of the control of these political influences which are constantly changing and constantly exempting this kind of taxation and that kind of taxation and making it a mere question of power in the Legislature from year to year as to how our taxation may be laid." III 1873 CONVENTION DEBATES 358 (Delegate Patterson).

In 1886, when the addition of the Uniformity Clause to Pennsylvania's constitution was still a recent memory, this Court observed that it was enacted because previously "[t]he burden of maintaining the state had been, in repeated instances, lifted from the shoulders of favored classes, and thrown upon the remainder of the community." *Fox's Appeal*, 112 Pa. 337, 352, 4 A. 149, 153 (1886). According to this Court, the Uniformity Clause, along with the rest of

Article IX of the Constitution, "was intended to cut up this system by the roots." *Id.*

Here, Plaintiffs have alleged that the School District is attempting to systematically lift the burden of taxation from one set of real estate owners (voting single family homeowners – more than 80 percent of whose properties are assessed below the CLR) and shift that burden systematically to another set of real estate owners (owners of high-value commercial properties). The constitutional legislative history makes clear that the School District's intentional discrimination favoring voting homeowners and disfavoring commercial property owners – allegations which this Court must accept as true – is plainly a kind of favoritism and unequal treatment that the Uniformity Clause was intended to eliminate.

II. THIS COURT'S PRIOR HOLDINGS MAKE CLEAR THAT THE UNIFORMITY CLAUSE BARS THE SCHOOL DISTRICT'S DISCRIMINATORY SCHEME

This Court's elaboration of the Uniformity Clause mandates that the School District's scheme is unlawful. In the 140 years since the Uniformity Clause was enacted, this Court has repeatedly reaffirmed that, just as its drafters intended, the Clause prohibits favoritism and inequality in taxation.

In the last ten years, this Court has issued two important opinions, *Downingtown Area School District v. Chester County Board of Assessment Appeals*, 590 Pa. 459, 913 A.2d 194 (2006) and *Clifton v. Allegheny County*, 600 Pa. 662,

969 A.2d 1197 (2009), that explicate Uniformity Clause real property jurisprudence.[13] A review of these decisions clarifies three points: (1) *Clifton* and *Downingtown* establish four basic principles that animate Uniformity Clause claims such as Plaintiffs', *see infra* pp. 21-50; (2) the Opinion of the Commonwealth Court failed to apprehend these principles, *see infra* pp. 21-50; and (3) the Opinion in this case is one of multiple decisions by the Commonwealth Court that relies upon misreadings of *Downingtown* and *Clifton*, *see infra* pp. 54-61.

Downingtown concerned a school district's appeal of the assessment of a shopping center. It focused on two issues: (a) whether a provision of the Assessments Law that barred a uniformity challenge based on variance from the CLR if the CLR was within 15 percent of the established predetermined ratio[14] violated the Uniformity Clause, and (b) whether the taxpayer could offer evidence of assessment-to-value ratios of similar properties to support its uniformity challenge. *See Downingtown,* 590 Pa. at 468-69, 913 A.2d at 201. This Court reversed the holding of the Commonwealth Court on both issues.

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[13] In reaching the decision below, the Commonwealth Court was guided by a line of cases, some of which post-date *Downingtown* and *Clifton*, that are incompatible with those two rulings. *See infra* pp. 54-61.

[14] The established predetermined ratio ("EPR") is "the county's intended ratio of assessed value to market value for any given tax year." *Downingtown*, 590 Pa. at 472 n.13, 913 A.2d at 203 n.13.

On the first, the Court concluded that the statute allowing the use of the EPR rather than the CLR had the effect of "carv[ing] out a class of taxpayers who are subjected to an unfairly high tax burden – namely, those whose assessment is appealed by any taxing district" because, as a result of that appeal, they lost the benefit of the CLR so long as the EPR was within 15 percent of the CLR. *Id.* at 474-75, 913 A.2d at 204-05. Otherwise, "the benefit of any effort at equalization is lost over a thirty-percent range." *Id.* With regard to the second point, the Court held that evidence of the assessment-to-value ratios of similar properties had to be admissible because the federal Equal Protection clause, which sets the floor for the interpretation of the Uniformity Clause, requires the "seasonable attainment of rough equality in treatment among similarly situated property owners." *Id.* at 469, 913 A.2d at 200-01.

Three years later, in *Clifton*, this Court confronted a taxpayer challenge to statutes that permitted the indefinite use of a base-year valuation. The Court found that Allegheny County's use of a base-year valuation violated the Uniformity Clause because it resulted in pervasive inequality and subclassifications of real property that could not be cured by individual assessment appeals. 600 Pa. at 707-17, 969 A.2d at 1224-30.

This Court's decisions in *Downingtown* and *Clifton*, along with other cases, establishes four key principles:

(1) The Uniformity Clause bars all classification of real property;

(2) The Uniformity Clause applies not just to the setting of assessments, but all governmental actions relating to taxes, including taxing district assessment appeals;

(3) The Uniformity Clause precludes deliberate discrimination against a disfavored subgroup of property owners; and

(4) The Uniformity Cause does not allow a claimed economic motivation as a justification for such discrimination.

The Commonwealth Court's decision in this case is contrary to each of these principles.

A. This Court Has Long Held That The Uniformity Clause Bars All Classification Of Real Property, Such As The School District's Selection Of Commercial Properties For Assessment Appeals

1. Subclassification Of Real Property Is Not Permissible Under The Uniformity Clause

The Commonwealth Court, purporting to rely on this Court's precedent, held that "meaningful subclassifications can be considered as a 'component of the overall evaluation of uniform treatment in the application of the taxation scheme,'" including in the context of whether to initiate an appeal. App. A at 5 (quoting *Weissenberger*, 62 A.3d at 506-07 (quoting *Downingtown*, 590 Pa. at 469, 913 A.2d at 200)). Yet, this Court has repeatedly held the opposite: Governmental subclassifications of real property for taxation are not permissible under the Uniformity Clause.

"Although there is no express constitutional requirement that real property be treated as a single class, this Court has consistently interpreted the uniformity requirement of the Pennsylvania Constitution as requiring all real estate to be treated as a single class entitled to uniform treatment." *Clifton*, 600 Pa. at 686, 969 A.2d at 1212. As the Court explained, classification of different types of real property is anathema to the Uniformity Clause:

> [J]udicial review of uniformity challenges to a statutory scheme of property taxation often needs only to focus on...whether the statute results in a "classification" – because in the property taxation context, any disparity in tax liability, beyond the expected practical inequities, most likely constitutes a violation of the Uniformity Clause.

Id. at 688-89, 969 A.2d at 1213.

Likewise, in *Downingtown*, this Court specifically recognized that the assessment appeals process itself can create a classification that violates the Uniformity Clause.

> The difficulty illustrated by the present case arises because a taxing authority within a county (such as the School District here) may disrupt this equalization scheme, premised solely upon a determination that it feels aggrieved by a specific property's assessment as it currently stands.…
>
> ….
>
> ….Because this classification is not based on any legitimate distinction between the targeted and non-

> targeted properties, it is arbitrary, and thus, unconstitutional.

Downingtown, 590 Pa. at 474-75, 913 A.2d at 204-05.

Here, Plaintiffs have alleged a clear classification resulting form the School District's appeals scheme – commercial vs. residential properties – and explained how the District's implementation of that classification will create different effective tax rates and burdens on these two classes of real property. The Commonwealth Court erred in upholding that classification.

2. In Permitting The School District's Classification Of Real Property, The Commonwealth Court Misread This Court's Precedent

The Commonwealth Court's conclusion that the School District's subclassification and disfavored treatment of large commercial properties is permissible under the Uniformity Clause rests on a misreading of this Court's precedent. In approving the School District's discrimination in this case, the Commonwealth Court quoted with approval the trial court's statement, "In *Downingtown* the Supreme Court held that 'the *Uniformity Clause* does not require equalization across all sub-classifications of real property.'" App. A at 4 (emphasis added). It then noted that "the Court has held that Equal Protection and Uniformity claims pertaining to matters of taxation are analyzed coterminously," and, remarkably, that prohibiting the consideration of "meaningful subclassifications" by the government "would represent an

impermissible departure from federal equal protection jurisprudence." App. A at 4-5 (quoting *Weissenburger,* 62 A.3d at 506-07). In so concluding, the Commonwealth Court and the trial court misinterpreted *Downingtown* as: (a) holding that the scope of the Uniformity Clause is identical to that of the Equal Protection clause; and (b) therefore permitting the government to rely on "meaningful subclassifications".

Contrary to the Commonwealth Court's interpretation, in *Downingtown* and *Clifton* this Court made clear that, unlike the Equal Protection Clause of the U.S. Constitution, the Uniformity Clause prohibits a taxing authorities' real-estate classification and imposes stricter review of government actions related to taxation.[15] In *Downingtown*, this Court explained:

> Although this Court has indicated that the Equal Protection Clause of the United States Constitution and the Uniformity Clause of the Pennsylvania Constitution are analyzed coterminously as to matters of taxation, the United States

[15] *Compare, e.g.*, *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Cty., W. Va.*, 488 U.S. 336, 344, 109 S. Ct. 633, 638 (1989) ("[Under the Equal Protection Clause a] State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable [and may] decide to tax property held by corporations, … at a different rate than property held by individuals."), *and Nordlinger v. Hahn*, 505 U.S. 1, 4, 112 S. Ct. 2326, 2328, (1992) (Equal Protection Clause does not bar discrimination between newer and longer-term homeowners), *with Westinghouse Elec. Corp. v. Board of Prop. Assessment, Appeals & Review of Allegheny Cty.*, 539 Pa. 453, 469, 652 A.2d 1306, 1314 (1995) ("[Under the Uniformity Clause] all real estate is a constitutionally designated class entitled to uniform treatment and the ratio of assessed value to market value adopted by the taxing authority must be applied equally and uniformly to all real estate within the taxing authority's jurisdiction.").

> Constitution does not require equalization across all potential sub-classifications of real property (for example, residential versus commercial).

Downingtown, 590 Pa. at 470 n.9, 913 A.2d at 201 n.9 (citations omitted). This Court reaffirmed three years later in *Clifton* that Uniformity Clause review of real estate taxation is stricter (*i.e.*, greater scrutiny is imposed on a governmental scheme) than the federal Equal Protection Clause. *Clifton* at 600 Pa. at 687, n.21 969 A.2d at 1212 (restating principle from *Downingtown* and emphasizing that the Equal Protection Clause lacks an equalization requirement "unlike Pennsylvania's uniformity requirement"). This Court has thus recognized that federal equal protection jurisprudence "sets the floor" upon which Pennsylvania's Uniformity Clause places additional restrictions on the government.[16]

However, this Court in *Downingtown* recognized that even the "floor" set by the Federal Equal Protection Clause has significant implications for taxpayer rights in uniformity litigation. It held that, the Equal Protection Clause requires that a taxpayer be allowed to prove that its property is over-assessed (*i.e.*, non-uniform) by reference to "'similar properties of the same

[16] *Downingtown*, 590 Pa. at 469, 913 A.2d at 200; *see also* Wade J. Newhouse, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION 27-28 (2d ed. 1984) (describing the "floor" as "a minimum standard required by the equal protection clause of the 14th amendment in the federal Constitution" below which states "cannot fall").

nature in the neighborhood,'" rather than exclusively by reference to all properties in a county. 590 Pa. at 467, 913 A.2d at 199 (quoting *In re Brooks Bldg.*, 391 Pa. 94, 101, 137 A.2d 273, 276 (1958)). And, because the Equal Protection Clause sets a floor, the Uniformity Clause cannot be more restrictive *on the taxpayer* than the Equal Protection clause. Thus, the longstanding prohibition on dividing real estate into "different classes for purposes of systemic property tax assessment" does not rule out consideration of "meaningful sub-classifications as a component of the overall evaluation of uniform treatment in the application of the taxation scheme" in the context of a *taxpayer's* charge of non-uniformity. *Id.* at 469, 913 A.2d at 200-201 (citations omitted).[17] Nothing in *Downingtown* reversed this Court's longstanding recognition that the Uniformity Clause prohibits *taxing authorities* from discriminating between subclassifications of real property. *Id.* (reaffirming "the prevailing requirement that similarly situated taxpayers should not be deliberately treated differently by taxing authorities").

Inexplicably, the Commonwealth Court interpreted *Downingtown's* holding that a *taxpayer* can use similarly situated properties to show that its

[17] *See also* Burt M. Goodman, ASSESSMENT LAW & PROCEDURE IN PENNSYLVANIA 324 (14th ed. 2014) (*Downingtown* "indicates that a taxpayer may present evidence outside the STEB ratio under the older common-law cases to show that a different ratio to assessed value exists within the county for all property. He or she may also be able to present a ratio study for a smaller area or for a certain class or sub-class of property.").

property is over-assessed as authorizing the *government* to discriminate between subclasses of property. App. A at 4. In so holding, the Commonwealth Court turned the reasoning of *Downingtown* on its head: Instead of treating the federal Equal Protection Clause as *a floor* for interpreting the Uniformity Clause, it construed the Equal Protection Clause as establishing *an exception* to the Uniformity Clause's sweeping prohibition on governmental discrimination between subclasses of property.[18]

In sum, the Commonwealth Court's ruling is contrary to this Court's precedent prohibiting subclassifications of real property.

B. The Uniformity Clause Applies To The School District's Selection Of Properties For Assessment Appeals

In addition to its conclusion that the School District could employ a subclassification of properties without violating the Uniformity Clause, the Commonwealth Court concluded there could be no violation of the Uniformity Clause because "it is now well settled that municipal tax authorities, such as school districts, may appeal a property's assessments." App. A at 4 (quoting *Weissenberger*, 62 A.3d at 507).

[18] This result is plainly incoherent, as the Equal Protection Clause limits, rather than enables, government action. *See* U.S. Const. amend. 14, § 1 ("No State shall…deny to any person within its jurisdiction the equal protection of the laws.").

In fact, contrary to this Court's precedent, the Commonwealth Court has failed to recognize any limit on a school district's appeal rights. The Court should reject the Commonwealth Court's notion of an absolute, unfettered school district right to appeal for three reasons: (1) this Court's precedent confirms that the Uniformity Clause applies to all tax-related actions of taxing authorities; (2) permitting unchecked appeals violates the prohibition on spot assessments; and (3) the notion of unfettered appeals is contrary to basic logic and general principles of constitutional interpretation. Any one of these reasons demonstrates that the Commonwealth Court erred; together it is a slam dunk.

1. The Uniformity Clause Applies To All Actions Of Taxing Authorities That Impact Taxes

This Court's precedent makes clear that the Uniformity Clause's broad prohibition on classifications of real property extends to classifications implemented by any taxing district for taxation purposes, including the classification of commercial vs. residential properties. The Commonwealth Court justified its conclusion that the Uniformity Clause does not restrain the School District's selection of properties by creating an artificial distinction between setting assessments and appeal assessments: "[I]n fact [the School District] was not assessing taxes, but rather exercising its statutory right to

appeal from said assessments." App. A at 9. This is a distinction without a difference.

This Court's precedents amply demonstrate that the Uniformity Clause constrains all actions of local taxing authorities in tax matters. The recognition that the Uniformity Clause applies to taxing authorities dates back more than a century ago in this Court's jurisprudence. In the early 20th Century case of *Delaware, L. & W.R. Co.'s Tax Assessment*, this Court summarized its prior Uniformity Clause jurisprudence: "The central thought running through all the opinions is that the principle of uniformity is a constitutional mandate to the courts, to the Legislature, *and to the taxing authorities*, in the levy and assessment of taxes which cannot be disregarded." 224 Pa. 240, 243, 73 A. 429, 430 (1909) (emphasis added); *see also Clifton*, 600 Pa. at 684, 969 A.2d at 1210 (same). In the same opinion, this Court described the duty of courts in applying the Uniformity Clause not only as "equality of burden," but also "*uniformity of method* in determining what share of the burden each taxable subject must bear." *Delaware, L. & W.R.,* 224 Pa. at 244, 73 A. at 430 (emphasis added). Nothing in these decisions limits the reach of the Uniformity Clause to only some taxing authorities (*i.e.*, not school districts) or to only some conduct relating to tax assessments.

This Court's recent opinion in *Downingtown* reaffirmed the broad scope of the Uniformity Clause. There, this Court held the Uniformity Clause applies to all "taxing authorities" and establishes a "prevailing requirement that similarly situated taxpayers should not be deliberately treated differently *by taxing authorities*." 590 Pa. at 470, 913 A.2d at 201 (emphasis added). Moreover, this Court concluded, even where a law does not violate the Uniformity Clause, "discrimination by local officials" or an "intentional or systematic method of enforcement of the tax laws" can. *Id.* at 470, 913 A.2d at 201 (citing *Beattie v. Cty. of Allegheny*, 589 Pa. 113, 119-20, 907 A.2d 519, 523 (2006)).

Hence, by holding that the Uniformity Clause only applies to the formal assessment of taxes and not the other actions of taxing authorities, App. A at 9, the Commonwealth Court has strayed from more than a century of this Court's precedent and advanced an interpretation flatly contrary to it.[19]

[19] Any reliance by the Commonwealth Court on the statute permitting school districts to file appeals, *see* App. A at 4 (citing 53 Pa.C.S. § 8855), would be misplaced. As explained above, this Court has repeatedly recognized that statutes are subordinate to the requirements of the constitution. *See, e.g.*, *Amidon*, 444 Pa. at 41, 279 A.2d at 55; *Pittsburgh Rys*, 415 Pa. at 185, 202 A.2d at 820.

2. The School District's Appeals Are Proxy Spot Assessments That Violate The Uniformity Clause

The Commonwealth Court's attempt to justify an unlimited right to appeal assessments is also contrary the constitutionally-grounded prohibition on spot assessments. By attempting to increase the assessments of Plaintiffs' properties outside of a county-wide reassessment, the School District is effectively engaging in unlawful spot assessments.[20] A spot assessment is a reassessment of one or more properties in the absence of a county-wide reassessment, a subdivision in property or an improvement on real property. *See* Joseph Bright, 27 SUMM. PA. JUR. 2D Taxation § 15:24 (2d ed.); 53 Pa. C.S. § 8817. Even though the spot reassessment statute defines spot assessments as not including "board action ruling on an appeal" or actions by a school district, 53 Pa. C.S. § 8802, the underlying constitutional principles that bar spot assessments[21] also apply to appeals taken by school districts. As

[20] The Assessment Law prohibits County Assessment offices from engaging in spot reassessments, which are defined as "[t]he reassessment of a property or properties by a county assessment office that is not conducted as part of a countywide revision of assessment and which creates, sustains or increases disproportionality among properties' assessed values," 53 Pa. C.S. §§ 8802, 8843.

[21] Because of the statutory spot-assessment prohibition, this Court has not been called on to decide whether spot reassessments also violate the Uniformity Clause, but it is clear that they do. For example, in *City of Lancaster v. County of Lancaster,* the Commonwealth Court held that the reassessment of some, but not all, properties within a county violated the Uniformity Clause. 599 A.2d 289, 299 (1991); *see also Wilkinsburg Sch. Dist. v. Board Prop. Assessment*, 797 A.2d 1034, 1036 (Pa. Commw. 2002) (prohibiting spot reassessment of single property). Notably, spot reassessments are also prohibited under federal equal

one leading scholar in this area has written: "[T]he constitutional error of spot assessment can be committed by any tribunal: assessment board, trial court or appellate court. Any decision that affirms the reassessment of property solely because of a sale, in the absence of improvements or a county wide reassessment, is unconstitutionally non-uniform." Joseph Bright, 27 SUMM. PA. JUR. 2D Taxation § 15:24 (2d ed.).

To hold otherwise and allow a school district an unfettered right of appeal would allow spot assessments by proxy: Taxing authorities could avoid the prohibition by having school districts, municipalities, or townships accomplish indirectly through assessment appeals what the board of assessment appeals cannot do directly. That would be contrary both to the prohibition on spot assessments and to the general principle that the government cannot evade a constitutional prohibition through the use of a

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protection doctrine, which "sets the floor" for the interpretation of the Uniformity Clause. *See Allegheny Pittsburgh Coal Co. v. Cty. Comm'n of Webster Cty.*, 488 U.S. 336 (1989) (spot assessment prohibited under federal equal protection principles); *Downingtown*, 590 Pa. at 469, 913 A.2d at 200-201 ("[F]ederal equal protection jurisprudence [ ] sets the floor for Pennsylvania's uniformity assessment."); *see also* Burt M. Goodman, ASSESSMENT LAW AND PROCEDURE 370 (14th ed. 2014) ("Spot reassessment violated Article III, Section 1, of the Pennsylvania Constitution prior to the enactment of [the statutory prohibition]."); *Id.* at 383 (same) (citing *O'Merle v. Monroe County Board of Assessment Appeals*, 504 A.2d 975 (Pa. Commw. 1986)). As Goodman has explained, "the law favors the remedy of countywide reassessment over the band-aid solution of spot reassessing.… [T]he United States and Pennsylvania Constitutions, the Pennsylvania statutory law, and appellate court interpretations of the above have eliminated the spot assessing remedy as a means of correcting assessment in equities." ASSESSMENT LAW AND PROCEDURE at 401.

proxy. *See, e.g.*, *Commonwealth of Pa. v. Brown*, 392 F.2d 120 (3d Cir. 1968) (city officials could not evade constitutional prohibition on discrimination by substituting private persons as trustees for Girard College with intent for new trustees to continue to carry out racial exclusion).

Indeed, one of the leading Pennsylvania assessment law authorities has well summarized the problem with the Commonwealth Court-created spot assessment loophole:

> After almost two decades of anti-spot assessment case law by the Pennsylvania Commonwealth and Supreme Courts, there now appears to be an exception for school districts to cause spot assessments. To appeal solely on the basis of a sale of selective properties in an assessment district is to create and sustain nonuniformity of taxation. If the boards of assessment appeals of Pennsylvania are prohibited from spot assessing, why should the taxing districts be allowed to accomplish the same by discriminatory assessment appeals?

Burt M. Goodman, ASSESSMENT LAW AND PROCEDURE at 419. Plainly, the constitutional prohibition on spot assessment applies to taxing districts such as the School District, just as it applies to boards of assessment appeals.

Thus, the Commonwealth Court's holding that the Uniformity Clause does not apply to appeals by taxing districts is contrary to the constitutional prohibition on spot assessment and the general principal that the government cannot evade a constitutional prohibition through the use of a proxy.

3. Exempting Taxing Authority Appeals From Uniformity Clause Review Is Contrary To Logic And General Principles Of Constitutional Interpretation

The Commonwealth Court's rule – that a taxing district's actions in selecting properties for assessment appeals are not subject to constitutional scrutiny – cannot be correct. What if a School District had appealed only assessments of properties owned by racial minorities, or only the assessments of properties owned by critics of the School District's leadership? Plainly such selective appeals would violate constitutional requirements, and a taxing authority would be barred from pursuing them. By the same token, where this Court has recognized clear prohibitions on classification and discrimination in the context of real property taxation, the Commonwealth Court erred in exempting a school district's selective discrimination favoring residential voters and disfavoring commercial owners.

C. The Uniformity Clause Prohibits Intentional Discrimination Such As The School District's Deliberate Targeting Of Apartment Complexes For Assessment Appeals

This Court must accept as true Plaintiffs' allegation that the School District is deliberately pursuing a scheme of assessment appeals to protect a favored group of voting homeowners and burden high-value commercial property owners with a disproportionate tax burden. Though the Commonwealth Court Opinion mentions this allegation in passing, App. A at

5, it inexplicably ignores it, basing its reasoning on the School District's position that it had an economic motivation for its actions. App. A at 7. But intentional discrimination against a disfavored group of taxpayers in favor of another group of voting property owners violates the Uniformity Clause regardless of whether there might also be an economic motivation.[22]

In addition to barring real property classifications, the Uniformity Clause establishes a "prevailing requirement that similarly situated taxpayers should not be deliberately treated differently by taxing authorities." *Downingtown*, 590 Pa. at 470, 913 A.2d at 201. "In this context, the term 'deliberate' does not exclusively connote wrongful conduct, but also includes any intentional or systematic method of enforcement of the tax laws." *Id.*, 590 Pa. at 470 n.10, 913 A.2d at 201 n.10 (citing *Beattie*, 589 Pa. at 119-20, 907 A.2d at 523).

The School District's conduct plainly violates these precepts. As alleged in the Complaint, the School District is intentionally targeting for appeal the assessments of commercial property owners and favoring resident, voting homeowners. By selectively seeking to raise the assessments of only some

[22] By the same token, a district's claim that it pursued appeals only against a certain ethnic group because of a desire to raise revenue would not shield its actions from constitutional scrutiny.

properties to the CLR,[23] knowingly leaving residential properties at proportionally lower assessments, the School District's conduct violates the Uniformity Clause. The School District's appeals seek an assessment of the Plaintiffs' properties at a level equal to or greater than the CLR. (R. 26-28a, 33a.) Yet, the District is deliberately leaving unchallenged the more than 80% of the thousands of residential properties assessed below the CLR, *i.e.*, below the ratio the District seeks to impose on Plaintiffs' properties, because their owners are its voters. (R.14-15a, 21a, 24a.) In other words, the School District is selecting properties for appeal based on their owners' political power.[24]

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[23] The common level ratio or "CLR" is "the ratio of assessed value to current market value used generally in the county." *Clifton*, 600 Pa. at 692, 969 A.2d at 1215. It is calculated for each county by the State Tax Equalization Board each year based on sales and assessment information provided by the county. *Id.* This Court has described the CLR as "a useful tool for a taxpayer...as it allows him to compare the assessed-to-market value ratio of his property to the average ratio throughout the district." *Id.* at 693, 969 A.2d at 1216. However, the empirical research incorporated into the Complaint suggests that, at least in the School District, the CLR does not accurately reflect the average assessment-to-value ratio, as noted here. *See* Complaint ¶ 42.

This Court has recognized that the CLR is not a cure-all for uniformity problems. *See infra* pp. 46-49.

[24] In concluding that "[t]axpayers did not allege that [the School District] selected Taxpayers' properties based on their owners' lack of political power,"App. A at 7, the Commonwealth Court ignored the relevant allegations of the Complaint, which plainly allege discrimination based on relative political power. (R.23-24a at ¶ 53 ("On information and belief, the School District has failed to appeal the assessments of single family homes because many if not all are owned by residents who vote in local elections and it would be politically unpopular to appeal such voters' property assessments.").)

Moreover, any ambiguity about Plaintiffs' allegations should have been construed in their favor, because, as this court has long recognized, preliminary objections may only be sustained where "it is clear and free from doubt from all the facts pleaded that the pleader

"[The School District] is…attempting to place on the owners of multi-family apartment buildings a greater share of the cost of government than the owners of single family homes." (R. 22a.) The School District's conduct is precisely the sort of "intentional or systematic method of enforcement of the tax laws" the Uniformity Clause prohibits. *See Downingtown*, 590 Pa. at 470 n.10, 913 A.2d at 201 n.10 (citing *Beattie*, 589 Pa. at 119-20, 907 A.2d at 523). Such a deliberate and wrongful classification violates the Uniformity Clause.

Finally, the Uniformity Clause prohibits not only intentional discrimination but also disparities that do not result from deliberate discrimination. *See, e.g.*, *Clifton*, 600 Pa. at 714, 969 A.2d at 1229 (finding uniformity clause violation in the absence of a deliberate classification scheme); *Beattie*, 589 Pa. at 128, 907 A.2d at 528 (fact that "mass assessments were undertaken recently and without any deliberate singling-out of a particular group of taxpayers for disparate treatment" does not end the Uniformity Clause analysis). Thus, even if Plaintiffs had not alleged a *deliberate* wrongful classification, they sufficiently aver the intentional selective appeals that "ha[ve] a discriminatory effect" in violation of uniformity principles.

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will be unable to prove facts legally sufficient to establish a right to relief." *Hospital. & Healthsystem Assoc. of Pa. v. Department. of Pub. Welfare*, 585 Pa. 106, 117 n.12, 888 A.2d 601, 607 n.12 (2005).

Millcreek Twp. Sch. Dist. v. Erie Cty. Bd. of Assessment Appeals, 737 A.2d 335, 339 (Pa. Commw. 1999) (citing *City of Lancaster,* 599 A.2d 289). The School District's selective appeals of only high-value commercial properties, not single-family homes, plainly violate the Uniformity Clause.

In sum, the Commonwealth Court erred in failing to give weight to the Uniformity Clause's prohibition against discrimination that has been robustly recognized in this Court's precedent.

D. The School District's Violations Of The Uniformity Clause Are Not Excused Because Of Its Claimed Economic Motivation

Contrary to Commonwealth Court's decision, the School District's asserted "reasonable and financial considerations" do not justify its deliberate discrimination or overcome the School District's uniformity obligations. App. A at 9. In response to Plaintiffs' argument that the District had improperly targeted nonvoting, commercial property owners, the Commonwealth Court found, based on its selective reading of the complaint, that, in fact, the District was acting rationally in "targeting high value properties for the purpose of increasing revenue." App. A at 7. The Commonwealth Court's conclusion that this claimed economic incentive excuses the underlying uniformity violation is fundamentally flawed, not only because of the *per se* prohibition on discrimination described above, but also because: (1) the School District's purported economic justification fails any scrutiny that applies; (2) the School

District's purported economic justification is mere cover for discrimination based on relative wealth, which this Court has long found prohibited under the Uniformity Clause; and (3) neither the appeals process nor the CLR cure the Uniformity Clause violation inherent in the School District's scheme of selective appeals.

1. The School District's Claimed Economic Justification Fails Any Scrutiny That Applies

In approving the School District's scheme, the Commonwealth Court relied on a misreading of *Clifton* in applying a "deferential rational basis test" App. A at 7 (quoting *Weissenburger*, 62 A.3d at 506).

In *Clifton*, this Court confronted a Uniformity Clause challenge initiated by a group of taxpayers to Allegheny County's use of a specific tax year as a base year for property tax assessment purposes. This Court explained that, in general under the Uniformity Clause, a plaintiff must establish both: "(1) that the enactment results in some form of classification; and (2) such classification is unreasonable *and* not rationally related to any legitimate state purpose." *Id.* at 685, 969 A.2d at 1211 (emphasis added). Under the second prong, the review of a governmental action "focuses on whether there is 'some concrete justification for treating the relevant group of taxpayers as members of distinguishable classes subject to different tax burdens.'" *Id.*

In the very next paragraph, however, the *Clifton* Court stated: "Property taxation, however, is different." *Id.* at 686, 969 A.2d at 1212. This Court went on to specify, "judicial review of uniformity challenges to a statutory scheme of property taxation often needs only to focus on the first prong of the uniformity analysis – whether the statute results in a 'classification' – because in the property taxation context, any disparity in tax liability, beyond the expected practical inequities, most likely constitutes a violation of the Uniformity Clause." *Id.* at 688-89, 969 A.2d at 1213. The deferential rational basis test is thus inapplicable to property tax classifications.

Here, the dispute concerns property taxation, and Plaintiffs have plainly alleged an intentional disparity in effective tax liability. Under *Clifton* that is sufficient to state a claim for violation of the Uniformity Clause, without regard to any claimed economic rationale or review under any deferential rational basis test.

Further, even if one were to set aside the holding of *Clifton* that property taxation is different and proceed to the second prong, Plaintiffs have still stated a claim. As *Clifton* makes clear, the government must have "some *concrete justification*" for discriminating between classes of taxpayers. *Id.* at 685, 969 A.2d at 1212. In *Clifton*, Allegheny County argued that its use of a base year for property tax assessments furthered legitimate government interests in

stability, predictability, and minimizing costs. *Id.* at 696, 969 A.2d at 1217. This Court concluded that those interests could not justify a taxing scheme that imposed a classification that "routinely taxes property owners with declining or stagnant property values at a higher rate of assessed-to-actual value than property owners with stable or appreciating property values." *Id.* at 714, 969 A.2d at 1229; *see also, e.g.*, *Downingtown*, 590 Pa. at 475, 913 A.2d at 205 (finding Uniformity Clause violation where there was no "legitimate distinction between the [properties] targeted [for assessment appeals] and non-targeted properties").

The School District's purported justification – that its scheme is designed to increase revenue – likewise flunks such a rigorous rational-basis review. All tax measures are obviously taken with the goal of generating maximum revenue at the lowest cost. Allowing a claimed economic motivation to excuse deliberate discrimination would eviscerate the Uniformity Clause.[25] In *Clifton*, this Court appropriately gave short shrift to Allegheny County's argument that its system saved the cost of periodic reassessments. *See id.* at 696 n.19, 969

[25] Moreover, if the School District is concerned about raising revenue, it has legitimate, nondiscriminatory ways to do so, including increasing the millage rate or advocating for a county-wide reassessment if it believes properties are underassessed. The fact that those options may be less popular politically than the School District's preferred approach – seeking revenue only from an underrepresented class notwithstanding widespread underassessments – only confirms the importance of the Uniformity Clause in preventing favoritism and opportunism in taxation.

A.2d at 1218 n.19 (noting, but not giving any weight to, Allegheny County's argument about the cost of assessments and appeals, in its evaluation of the classification imposed by the county's assessment scheme). Likewise, here the School District cannot, in the name of efficiency and minimizing its appeal expenses, discriminate in favor of residential voters and against commercial property owners.

2. Discrimination Based On Relative Wealth, Like That Practiced By the School District, Is Prohibited Under The Uniformity Clause

Likewise, contrary to the conclusion of the Commonwealth Court, the fact that the School District may be targeting "high value properties for the purpose of increasing revenue," App. A at 7, is not an excuse for its conduct. To the contrary, this is an admission that the District is engaging in the Uniformity Clause-prohibited conduct of discriminating based on relative wealth or perceived ability to pay. As this Court noted long ago, where the government "tax[es] those whose incomes arise above a stated figure merely for the reason that in the discretion of the Legislature their incomes are sufficiently great to be taxed[, i]t is obvious that the application of the tax is not uniform." *Kelley v. Kalodner*, 320 Pa. 180, 188-89, 181 A. 598, 602 (1935). Imposing an additional share of the real estate tax burden on owners of high-value commercial properties simply because the District thinks they might

more easily bear that cost or that they can pass it on to their tenants is inconsistent with the Uniformity Clause, regardless of its impact on the District's revenue.

3. The School District's Scheme of Selective Appeals Is Not Saved From Unconstitutionality By The Appeals Process Or The CLR

Finally, the School District's wrongful discrimination is not somehow cured by the appeals process or by the fact that taxpayers and taxing districts supposedly share an equal right to appeal. *Cf.* R.65(a) (quoting *Vees*, 867 A.2d at 749, for the proposition that "the statutory appeal mechanism [is] available uniformly to all interested parties [and as a result its use by the school district] does not amount to deliberate, purposeful discrimination"). To the contrary, this Court has recognized that widespread substantial disparities in property values relative to their assessments is problematic under the Uniformity Clause – even in the absence of intentional discrimination – and that neither the appeals process nor the related application of the CLR is a cure for such disuniformity.

In *Clifton*, this Court reviewed the "pervasive" inequity resulting from Allegheny County's history of delayed and inconsistent reassessments. 600 Pa. at 672-76, 969 A.2d at 1203-05, 1228. Much as the School District argues in this case that its selective appeals will do no harm because they can only result

in a purportedly "uniform" assessment based on the CLR, Allegheny County argued in *Clifton* that the appeals process was a cure for wide dispersions in assessment-to-market-value ratios. This Court rejected that argument because individual appeals cannot remediate widespread inequity in assessments:

> There may well be circumstances where use of the CLR and the individual appeal process adequately serves to address cases of particular inequity, and as the case law demonstrates, both taxpayers and municipalities make use of the appeals process. But that process is *not adequate when the inequity is pervasive,* as the evidence demonstrates that it has become the case in Allegheny County.

Id. at 712, 969 A.2d at 1227-28. Though never acknowledged by the Commonwealth Court, Plaintiffs have alleged a similar pattern of pervasive inequity here, where the School District is intentionally permitting single family homes to remain underassessed, with the consequence that large commercial properties are being asked to bear a disproportionate share of the cost of government, something this Court has long recognized as prohibited under the Uniformity Clause.[26]

[26] *See Narehood v. Pearson*, 374 Pa. 299, 307-08, 96 A.2d 895, 899 (1952) ("The intentional, systematic undervaluation by state officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed upon the full value of his property."); *Deitch Co. v. Board of Prop. Assessment of Allegheny Cty.*, 417 Pa. 213, 220, 209 A.2d 397, 401 (1965); *Clifton,* 600 Pa. at 691; *see also Allegheny Pittsburgh Coal Co.*, 488 U.S. at 346, 109 S. Ct. at 639("relative undervaluation of comparable property" also prohibited under equal protection clause).

Squarely relevant to Plaintiffs' allegations of intentional undervaluation of property, the Court in *Clifton* went on to hold that the appeals process is not a cure for widespread disuniformity in assessments:

> The County cannot satisfy the proportionality requirement by shifting the burden of achieving uniformity to the taxpayer or aggrieved taxing entity (most often the local public school district), whom the County would task with correcting its own constitutional deficiency. *Relying upon taxpayers to "force" application of the CLR through individual assessment appeals is no substitute for a constitutionally uniform property assessment in the first instance.* The County's expressed concern for 'the reality of property appreciation and depreciation' counsels in favor of periodic countywide accuracy, not saddling taxpayers with the burden of curing the County's constitutionally deficient method of taxation in piecemeal fashion.

600 Pa. at 712, 969 A.2d at 1227-28 (emphasis added). The same logic applies with equal, if not greater, force here: The School District should not be permitted to use selective appeals against commercial properties as a piecemeal and discriminatory substitute for a county-wide reassessment.

Nor, under this Court's precedent, does the existence of a contested appeal process or the CLR somehow cure the School District's Uniformity Clause violation. As this court noted in *Clifton,* "the appeal process only affects the property immediately before the Board" and thus cannot cure "'any systematic under assessment of higher-value properties.'" *Id.* at 712, 969 A.2d

at 1228 (quoting *Beattie*, 589 Pa. at 126, 907 A.2d at 527). As a result, even if the property subject to the appeal is corrected to an accurate figure "the alleged discriminatory effect, though lessened, would remain." *Id.* at 663, 712-13, 969 A.2d at 1228. Likewise, here, Plaintiffs have alleged that the School District is intentionally permitting the overwhelming majority of residential properties to remain substantially under-assessed, (R. 19-20a, at¶¶ 42-44), something that Plaintiffs have no means of correcting in the appeals of their property assessments. Neither the appeal process nor application of the CLR can cure these defects.

Finally, the fact that the appeals process cannot cure widespread disuniformity should also lead this Court to reject the argument, advanced by the School District and accepted by the Commonwealth Court in *Vees*, that the opportunity to appeal is and must be equally available to both taxpayers and taxing districts. *See* R.65a; *Vees* 867 A.2d at 749. That obviously – and wrongly – ignores that the Uniformity Clause – like most constitutional limitations – restricts state action, such as the School District's, not private action, such as a taxpayers' right to appeal.

In sum, the School District intentionally chose a specific subgroup – commercial properties – with the effect that that subgroup will have to contest assessment appeals, including the significant costs involved in doing so – and

face disproportionate assessments. This discrimination plainly violates the Uniformity Clause, notwithstanding the School District's claimed economic motivation.

III. THIS COURT'S INTERPRETATION OF THE UNIFORMITY CLAUSE MAKES PRACTICAL SENSE AND IS CONSISTENT WITH LIMITING THE SCHOOL DISTRICTS' STATUTORY RIGHT TO APPEAL ASSESSMENTS

A. Prohibiting The School District's Discriminatory Scheme Would Further Fairness And Is Consistent With Sound Policy

The School District's scheme not only violates the Uniformity Clause, but it is unfair. A key concern in the evaluation of any taxation system is both real and perceived fairness. Taxes in general are viewed negatively, and real estate taxes are particularly poorly regarded. *See* Tax Foundation, *2006 Annual Survey of U.S. Attitudes on Tax and Wealth* Q675, *available at* http://taxfoundation.org/sites/taxfoundation.org/files/docs/sr141.pdf (39% said local property was "the worst [state and local] tax – that is, the least fair," more than any other tax). This view is not just a perception; objective observers have frequently viewed property taxes, in general and particularly in Pennsylvania, as poorly administered. *See* Glenn Fisher, THE WORST TAX?: A HISTORY OF THE PROPERTY TAX IN AMERICA (1996). Permitting favoritism in property taxation, like the School District's targeting the property assessments of a politically under-represented group for appeals, will increase the actual and perceived unfairness of the tax system and undermine its legitimacy.

Plaintiffs recognize that there is a school-funding crisis in the Commonwealth of Pennsylvania. Discriminatory appeals are no solution. Rather, taxing authorities such as the School District have many reasonable alternative avenues to address revenue shortfalls and inequities in the assessment base. For example, they could seek changes in tax structure or new funding mechanisms through statewide legislation or increase tax millage rates. And, of course, to the extent they believe that relative property values have changed since a prior countrywide reassessment, counties are free, and should be encouraged, to conduct a countywide reassessment.

The School District's Band-Aid discriminatory solution of increasing revenue by targeting high-value commercial properties is not a constitutional solution.[27] As this Court observed over 100 years ago, "while every tax is a burden, it is more cheerfully borne when the citizen feels that he is only required to bear his proportionate share of that burden measured by the value of his property to that of his neighbor." *Delaware, L. & W. R.*, 224 Pa. at 243, 73

[27] The School District is apparently not alone in this effort to close its school funding gap by targeting exclusively commercial properties; rather it appears to be a widespread, if relatively recent, phenomenon. The Pennsylvania School Board Association's published defense of school-district-initiated assessment appeals repeatedly implies that commercial properties are being singled out for appeals as the solution for the school funding problem. Pennsylvania School Board Association, *A Closer Look: Why Assessment Appeals Help School Districts Tax More Fairly,* https://www.psba.org/wp-content/uploads/2015/06/ACL_assessments.pdf (last accessed July 8, 2016). Seeking to bolster school district budgets through discriminatory assessment programs is not a constitutionally acceptable solution.

A. at 430; *id.* ("This is not an idle thought in the mind of the taxpayer, nor is it a mere speculative theory advocated by learned writers on the subject; but it is a fundamental principle written into the Constitutions and statutes of almost every state in this country.").

B. A Taxing District's Right To Appeal Should Be Narrowly Limited To Ensure Uniformity

This Court should reverse the Commonwealth Court's decision and recognize and reiterate the significant restrictions the Uniformity Clause places on a taxing district's ability to file an assessment appeal. Specifically, this Court should recognize that taxing districts are flatly prohibited from systematically targeting a subclass of properties, such as commercial properties, for assessment appeals.

Importantly, a prohibition against a school district from discriminating in filing assessment appeals would be only that: a prohibition against creating subclasses of properties and discriminating among them. So, for example, a school district might avoid such discrimination and further uniformity by appealing a representative set of properties from each category recognized by the State Tax Equalization Board (*e.g.*, residential, industrial, commercial, agricultural, *see* 61 Pa. Code 603.21(1)), in proportion to the dollar value of properties. Alternatively, the school district might appeal the properties whose

market-to-assessed-value ratios are furthest from the CLR and not distinguish among different types of properties or the dollar value of the properties.

Finally, of course, if a school district believed that there was systemic inequity in the relative assessments of properties, it could seek a countywide reassessment, just like any other interested party. *See City of Lancaster*, 599 A.2d 289 (directing county to conduct county-wide reassessment in response to action filed by, *inter alia*, taxing districts) (Pa. Commw. 1991); *Millcreek Tp. Sch. Dist. v. County of Erie*, 714 A.2d 1095 (Pa. Commw. 1998) (affirming order compelling county to conduct county-wide reassessment in action brought by school district). And if the School District's only concern is revenue, it could increase its millage rate.

IV. THE COMMONWEALTH COURT'S DECISION WAS THE LATEST IN A SERIES OF FLAWED DECISIONS ABOUT UNIFORMITY AND SCHOOL-DISTRICT ASSESSMENT APPEALS

The Commonwealth Court's decision is as untethered from the text, history and this Court's interpretation of the Uniformity Clause as it was reliant on its prior opinions, none of which has been heard on its merits by this Court. While the Commonwealth Court no doubt is bound by its own

decisions,[28] this court plainly is not. *See, e.g.*, *Flagiello v. Pennsylvania Hosp.*, 417 Pa. 486, 514, 208 A.2d 193, 207 (1965) (rejecting the Commonwealth Court's "perpetuat[ion of] an obsolete rule by blind adherence to the principle of stare decisis."). Rather, this Court should make clear that this entire line of Commonwealth Court decisions is incompatible with the Uniformity Clause and the decisions of this Court.

This case is not an isolated misreading of the Uniformity Clause. It is the latest in a series of decisions through which the Commonwealth Court has, over time, approved taxing districts' appeals of property tax assessments without considering whether, *inter alia*, the appeals involve illegal subclassifications of real property or deliberate discrimination in violation of the Uniformity Clause. *See, e.g.*, *Millcreek Twp. Sch. Dist. v. Erie Cty. Bd. of Assessment Appeals*, 737 A.2d 335 (Pa. Commw. 1999); *Vees v. Carbon Cty. Bd. of Assessment Appeals*, 867 A.2d 742 (Pa. Commw. Ct. 2005); *Appeal of Springfield Sch. Dist. ("Springfield I")*, 879 A.2d 335 (Pa. Commw. 2005); *Smith v. Carbon Cty. Bd. of Assessment Appeals*, 10 A.3d 393 (Pa. Commw. 2010); *Weissenberger v. Chester Cty. Bd. of Assessment Appeals*, 62 A.3d 501 (Pa. Commw. 2013); *In re*

[28] *Commonwealth, Dep't of Transp., Bureau of Driver Licensing v. Green*, 119 Pa. Commw. 281, 283, 546 A.2d 767, 768 (1988) ("Although, paraphrasing Ralph Waldo Emerson, a foolish consistency may be the hobgoblin of little minds, this court can do no better than to adhere to the steady line of decisions…").

Springfield Sch. Dist. ("Springfield II"), 101 A.3d 835 (Pa. Commw. 2014). The Commonwealth Court in this case relied extensively on those decisions. App. A *passim*. But the fact that the Commonwealth Court blindly adhered to mistakes it made in earlier cases does not justify its decision here.

A. The Commonwealth Court's Initial Decisions Concerning School District Assessment Appeals Were Unduly Permissive

In *Millcreek*, the Commonwealth Court first concluded that taxing authority appeals are not the same as assessments, and are consequently not subject to the statutory prohibition on spot assessments. *See Millcreek*, 737 A.2d at 339. Though the court recognized that a taxpayer could establish a uniformity violation by showing "deliberate discrimination in the application of the tax or that the application of the tax has a discriminatory effect," *id.*, it otherwise was silent on the role of the Uniformity Clause as a limit on taxing authorities' choices in filing assessment appeals.

In the next case, *Vees*, the Commonwealth Court extended *Millcreek*'s holding to find that "[a]s a matter of law, [the 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. In other words, if a taxpayer and a taxing authority share an equal right to appeal an assessment, the *Vees* court found that uniformity is sufficiently protected. In

reaching that conclusion, the court focused particularly on the applicable ratio as a mechanism to ensure uniformity. *Id.*

Relying on *Vees*, the Commonwealth Court in *Springfield I* similarly concluded that "[t]he Law places no restrictions on the 'methodology' employed by a school district or by an individual property owner in determining whether to appeal." *Springfield I*, 879 A.2d at 341. The court ignored that laws other than the Assessment Law, such as the Uniformity Clause, restrict a taxing authority's methodology for determining whether to appeal.[29]

The court went a step further in *Springfield I*, however. Notwithstanding its earlier recognition in *Millcreek* that "deliberate discrimination" violates the Uniformity Clause, the court in *Springfield I* held that the trial court's finding that the school district's methodology for selecting properties for appeal was "deliberate discrimination" did not compel the conclusion that the district violated the Uniformity Clause. *Id.* Among other things, the court held that, because the school district enjoyed a statutory right to appeal, its motive was irrelevant. *Id.* In addition, the court concluded that the fact that the property at

[29] To the extent the Commonwealth Court's reference to "the Law" in *Springfield I* was intended as a reference to the Assessment Law, its conclusion is undoubtedly correct so far as it goes. But it is irrelevant to the extent it ignores limitations the Uniformity Clause imposes.

issue was underassessed as compared to its market value justified the appeal, without regard to the ratio of market-to-assessed value of other properties in the school district.

B. Even After *Downingtown*, the Commonwealth Court Continued To Permit Improper School District Assessment Appeals

Only a year after *Vees* and *Springfield I*, this Court rejected the premises underlying the Commonwealth Court's then-recent decisions. As noted above, in *Downingtown* this Court made clear that assessment appeals can pose a uniformity problem. *See Downingtown*, 590 Pa. at 475, 913 A.2d at 204-05; *see supra* pp. 37-41. In fact, the Supreme Court in *Downingtown* specifically adopted the reasoning of the **dissent** in *Vees,* not the majority, in recognizing the role that appeals play in undermining uniformity.[30] *See id.* at 471-72, 913 A.2d at 202-03. Moreover, this Court recognized that comparison of the property at issue to the applicable CLR did not necessarily preclude any uniformity challenge. *Id.* at 470, 913 A.2d at 201.

Commonwealth Court, however, did not follow this Court's lead in subsequent cases. Indeed, it went further in the opposite direction in

[30] A key part of that dissent's reasoning was that, "as a mere consequence of the lodging of an assessment appeal," a uniformity problem could arise that must be corrected. *Id.* (citing *Vees*, 867 A.2d at 750-54 (Friedman, J., dissenting)). As the Supreme Court recognized in *Downingtown*, based on the dissent in *Vees*, such a uniformity problem is subject to review in the courts and must be corrected.

Weissenberger. There, the Commonwealth Court permitted a taxing authority to use "financial and economic thresholds" and "classifications of property" to selectively target properties for appeal and evade the requirements of uniformity. *Weissenberger*, 62 A.3d at 508-09. Moreover, the court – ignoring *Downingtown* – adopted its prior reasoning that precluded any argument that the school district's method for selecting properties for appeal was deliberate discrimination. *Id.*

In *Smith*, the court entirely discarded this Court's precedent. This Court has long held that a taxpayer can support a uniformity challenge with evidence of "the market value of his property and of similar properties of the same nature in the neighborhood and by proving the assessments of each of those properties and the ratio of assessed value of actual or market value." *In re Brooks Bldg*, 391 Pa. 94, 101, 137 A.2d 273, 276 (1958). Moreover, this Court in *Brooks* rejected the taxing authorities' claim that the taxpayer had to prove "a *uniform* ratio of assessed value to actual value has been applied *generally* throughout the entire district." *Id.* at 101, 137 A.2d at 276 (emphasis in original). This Court reiterated these principles in *Downingtown,* 590 Pa. at 467-68, 913 A.2d at 199-200 (discussing *Brooks*). But in *Smith*, the Commonwealth Court effectively held that the only measure of uniformity was the CLR. *Smith*, 10 A.3d at 407 ("a taxpayer is entitled only to have his assessment conform

with the common level existing in the district, not with a small sample of properties being taxed at a lower than average level"). In doing so, it effectively precluded taxpayers from using evidence of the market and assessed value of particular properties to prove a uniformity violation in an assessment appeal.

Most recently, in *Springfield II*, the Commonwealth Court again ignored this Court's guidance in *Downingtown*, restating its prior conclusion that a taxing authority did not violate the Uniformity Clause by bringing assessment appeals. *See Springfield II*, 101 A.3d at 849. And the court further restricted the evidence a taxpayer would be permitted to present to show that the taxing district's appeal would result in a violation of uniformity. It held that evidence of the sales price of comparable properties could not be used to show that the ratio of those prices to the assessed values was lower than the CLR. *Id.* at 850 (citing *Finter v. Wayne Cnty Bd. of Assessment Appeals*, 889 A.2d 678, 682 (Pa. Commw. 2005)).

Through this line of cases, the Commonwealth Court has effectively permitted taxing authorities to selectively file appeals against any properties, without regard to the Uniformity Clause, and precluded taxpayers from proving that those appeals violate uniformity. This Court should use this latest in this line of cases to correct the Commonwealth Court's deviation from the

proper application of the Uniformity Clause in the context of real property taxation and assessment appeals.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reverse the judgment of the Commonwealth Court and the Court of Common Pleas. This Court should hold that the School District is prohibited from systematically targeting a subclass of properties, such as commercial properties, for assessment appeals. Further, this Court should remand to the Court of Common Pleas with instructions to hold a hearing to determine whether the School District's scheme for selecting appeals violates the Uniformity Clause because, among other things, it results in a classification of real property and deliberately discriminates against Plaintiffs, without regard to any economic justification the School District offers. This Court should further instruct the trial court to enter an injunction prohibiting the School District's scheme of selective appeals if it violates the Uniformity Clause.

Respectfully submitted,

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Dated: July 8, 2016

CERTIFICATION

This 8th day of July, 2016, I certify that:

Electronic version. The electronic version of this brief that has been provided to the Court in .pdf format in an electronic medium today is an accurate and complete representation of the paper original of the document that is being filed by Appellants.

Word count. This brief contains 13,518 words, as counted by the undersigned's Microsoft Word word processing software, and it therefore complies with the 14,000 word limit set by Pa. R.A.P. 2135(a)(1).

Service. I am this day serving two true and correct copies of this Brief and accompanying Reproduced Record via Federal Express upon the following person, which service satisfies the requirements of Pa. R.A.P. 121.

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Dated: July 8, 2016

APPENDIX A

OPINION OF THE COMMONWEALTH COURT OF PENNSYLVANIA AFFIRMING THE ORDER OF THE MONTGOMERY COUNTY COURT OF COMMONS PLEAS, DATED SEPTEMBER 10, 2015

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Valley Forge Towers Apartments N, LP; Morgan Properties Abrams Run Owner LP; KBF Associates, LP; Gulph Mills Village Apartments LP; and The Lafayette at Valley Forge LP, Appellants	:	
v.	:	Lower Ct. Docket # 2014-09870
Upper Merion Area School District and Keystone Realty Advisors, LLC	:	No. 1960 C.D. 2014 Argued: May 8, 2015

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION BY
JUDGE COVEY

FILED: September 10, 2015

Morgan Properties Abrams Run Owner LP, KBF Associates, LP, Gulph Mills Village Apartments LP and The Lafayette at Valley Forge LP (collectively, Taxpayers)[1] appeal from the Montgomery County Common Pleas Court's (trial court) October 9, 2014 order sustaining Upper Merion Area School District's (UMASD) and Keystone Realty Advisors, LLC's (Keystone Realty) (collectively, District) preliminary objections to Taxpayers' complaint seeking a declaratory judgment, injunctive relief and damages (Complaint). There are three issues before the Court: (1) whether Taxpayers stated a claim for which relief could be granted when they alleged that the District violated Article 8, Section 1 of the Pennsylvania Constitution

[1] Valley Forge Towers Apartments N, LP (Valley Forge Towers) was originally a named plaintiff in the action; however, the parties discontinued the action as to Valley Forge Towers. By July 7, 2015 order this Court granted the parties joint motion for leave to discontinue the action as to Gulph Mills Village Apartments LP and The Lafayette at Valley Forge LP, and discontinued the action as to Gulph Mills Village Apartments LP and The Lafayette at Valley Forge LP.

(Uniformity Clause) by evaluating and filing assessment appeals only against the Taxpayers and similar commercial properties; (2) whether administrative exhaustion principles prevent Taxpayers from bringing their Uniformity Clause challenge as an independent equity action, rather than in separate assessment appeals; and (3) whether Taxpayers alleged a proper negligence claim against Keystone Realty. After review, we affirm.

Taxpayers own apartment buildings in UMASD. UMASD filed annual assessment appeals with the Montgomery County Board of Assessment Appeals (Board) challenging the assessments of Taxpayers' properties. The Board denied the appeals and UMASD appealed to the trial court. The appeals remain pending before the trial court.

On May 2, 2014, Taxpayers filed their Complaint. Taxpayers allege in the Complaint that UMASD contracted with Keystone Realty to recommend property assessments from which UMASD should appeal. Taxpayers further contend that, as a result of Keystone Realty's recommendations, UMASD systematically selected and appealed from commercial property assessments, including apartment buildings, but did not appeal from residential property assessments. Finally, Taxpayers aver that UMASD's actions were part of a scheme between UMASD and Keystone Realty to generate more tax revenue for UMASD which, in turn, would benefit Keystone Realty, since it was paid a contingency fee of 25% of any increased revenue it generated for UMASD. Taxpayers claim that UMASD's appeals solely of commercial properties violated the Uniformity Clause.

On May 28, 2014, the District filed its preliminary objections to the Complaint to which Taxpayers responded on June 24, 2014. The trial court heard argument on October 3, 2014, and sustained the preliminary objections by October 9,

2014 order, thereby dismissing the Complaint with prejudice. Taxpayers appealed to this Court.[2]

Pennsylvania Constitution's Uniformity Clause

Taxpayers first argue that UMASD's selective assessment appeals violate the Pennsylvania Constitution's Uniformity Clause. Specifically, they contend that "the [District] has concocted a scheme to ensure that commercial properties, such as the [Taxpayers'] apartment buildings, are assessed at a higher ratio to their fair market value than residential properties." Taxpayers' Br. at 13. The District rejoins that Taxpayers have failed to establish a lack of uniformity or that UMASD has acted in an unconstitutional manner. The District, *inter alia*, cites *Weissenberger v. Chester County Board of Assessment Appeals,* 62 A.3d 501 (Pa. Cmwlth. 2013) to support its position.

The Pennsylvania Constitution's Uniformity Clause provides: "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." Pa. Const. art. VIII, § 1. Section 8855 of the Consolidated County Assessment Law (Law) states in relevant part:

> 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

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[2] Our scope of review of an appeal from an order sustaining preliminary objections and dismissing a complaint is to determine whether the trial court committed legal error. When considering preliminary objections, we must accept as true all well-pled facts set forth in the complaint, as well as all inferences reasonably deducible therefrom, but not conclusions of law. Preliminary objections in the nature of a demurrer should be sustained only where the pleadings are clearly insufficient to establish a right to relief and any doubt must be resolved in favor of overruling the demurrer.

Dadds v. Walters, 924 A.2d 740, 742 (Pa. Cmwlth. 2007) (citations omitted).

> appeal were taken by a taxable person with respect to the assessment, and, in addition, may take an appeal from any decision of the board or court of common pleas as though it had been a party to the proceedings before the board or court even though it was not a party in fact.

53 Pa.C.S. § 8855. "[I]t is now well settled that municipal tax authorities, such as school districts, may appeal a property's assessment." *Weissenberger,* 62 A.3d at 507.

Improper Classification

Taxpayers assert that the trial court erred in relying on *In re Springfield School District*, 101 A.3d 835 (Pa. Cmwlth. 2014) (*Springfield II*), because the *Springfield* Court misinterpreted the Pennsylvania Supreme Court's decision in *Downingtown Area School District v. Chester County Board of Assessment Appeals*, 913 A.2d 194 (Pa. 2006). In *Downingtown* the Supreme Court held that "the Uniformity Clause does not require equalization across all sub-classifications of real property." Trial Ct. Op. at 7. Taxpayers maintain that the *Downingtown* Court was merely distinguishing the United States (U.S.) Constitution's Equal Protection Clause from the Pennsylvania Constitution's Uniformity Clause. However, this Court in *Weissenberger* explained the significance of the *Downingtown* holding in relation to the Pennsylvania Constitution's Uniformity Clause. The *Weissenberger* Court explained:

> Our Supreme Court consistently interprets the Uniformity Clause as precluding real property from being divided into different classes for purposes of systematic assessment: 'The [Pennsylvania Constitution] [requires] all real estate to be treated as a single class entitled to uniform treatment.' *Clifton* [*v. Allegheny Cnty.*], . . . 969 A.2d [1197,] 1212 [(Pa. 2009)]. Moreover, while the Court has held that Equal Protection and Uniformity claims pertaining to matters of taxation are analyzed coterminously, the Court has recognized that the U.S. Constitution does not require

> equalization across all potential subclassifications of real property, noting that federal standards contemplate that *similarly situated* taxpayers should not be deliberately treated differently by tax authorities. *Downingtown* . . . . Thus, **while noting that real property cannot be subdivided into classes for purposes of assessment and taxation, the Court held that meaningful subclassifications can be considered as a 'component of the overall evaluation of uniform treatment in the application of the taxation scheme. . . . [To do otherwise] would represent an impermissible departure from federal equal protection jurisprudence** . . . [.]' *Id.* . . . at 200.

Weissenberger, 62 A.3d at 506-07 (emphasis added). The Court concluded:

> [A] [s]chool [d]istrict 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 reassessment. Moreover, . . . **adopting a methodology that narrows the class of properties evaluated for appeal based upon 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 (emphasis added). Thus, we hold that the *Springfield II* Court did not misinterpret *Downingtown*, and the trial court properly relied thereon.

Deliberate Discrimination

Taxpayers further declare that the UMASD selected its properties based on their owners' lack of political power, and thereby deliberately discriminated against an underrepresented group violating uniformity. *See Downingtown.* We acknowledge that Taxpayers alleged in their Complaint: "On information and belief, [UMASD] has failed to appeal the assessments of single family homes **because many if not all are owned by residents who vote in local elections** and it would be politically unpopular to appeal such voters' property assessments." Complaint ¶53;

Reproduced Record (R.R.) at 16a (emphasis added). However, Taxpayers also alleged:

> 48. Upon information and belief, pursuant to the contract between the School Board and Keystone [Realty], the School Board agreed to pay Keystone [Realty] a contingency fee of 25% of any increased tax revenue [UMASD] generates through a Keystone [Realty]-assisted appeal.
>
> 49. This contingency fee arrangement creates for Keystone [Realty] **an economic interest in recommending that [UMASD] target for appeal high-value properties**, in disregard of the requirements of the Uniformity Clause.
>
> 50. This interest creates a direct conflict between Keystone [Realty]'s interest in maximizing its contingency fee and [UMASD's] obligations to abide by the Uniformity Clause. For example, rather than selecting properties for appeal to further uniformity and ensure that no taxpayer pays more or less than its proportionate share of the cost of government, **this arrangement rewards targeting for appeal larger, higher value commercial properties** and not appealing lower value, lower assessed single family homes.
>
> 51. In fact, with the assistance of Keystone [Realty], [UMASD] has embarked on precisely such an unconstitutional assessment appeal scheme. Rather than appeal the assessments of real properties with assessment-to-market value ratios that are substantially lower than the common-level ratio, which would further uniformity, [UMASD], upon information and belief based on recommendations of Keystone [Realty], has (a) failed to appeal the assessments of any single family homes; and (b) **systematically appealed the assessments of commercial properties, including multi-family apartment buildings, with values and assessment-to-market ratios substantially greater than the single family home assessments** not being appealed.

R.R. at 14a-15a (emphasis added). "In reviewing preliminary objections, all material facts averred in the complaint, and all reasonable inferences that can be drawn from them, are admitted as true. However, a court need not accept as true conclusions of

law, unwarranted inferences, argumentative allegations, or expressions of opinion." *Seitel Data, Ltd. v. Ctr. Twp.*, 92 A.3d 851, 859 (Pa. Cmwlth. 2014) (citations omitted). Our Supreme Court has held:

> 'When a taxpayer believes that he has been subjected to unequal taxation . . . he generally must demonstrate that: (1) the enactment results in some form of classification; and (2) such classification is unreasonable and not rationally related to any legitimate state purpose.' *Clifton v. Allegheny Cnty.*, . . . 969 A.2d 1197, 1211 ([Pa.] 2009) (citing *Wilson Partners L.P. v. Bd. of Fin. & Revenue*, . . . 737 A.2d 1215 ([Pa.] 1999)). In the absence of classifications that are 'suspect' or 'sensitive,' or that implicate fundamental or important rights, **classifications are subject to the deferential rational basis test.** *Id.* . . . at 1211 n.[]19 (emphasis added) (citing *Commonwealth v. Albert*, . . . 758 A.2d 1149 ([Pa.] 2000)).

Weissenberger, 62 A.3d at 506 (emphasis added). Because Taxpayers expressly alleged that the District was targeting high value properties for the purpose of increasing revenue, "it is easy to envision a **rational basis** for [UMASD] taking these appeals: sufficient increased revenue to justify the costs of appeals. Judicious use of resources to legally increase revenue is a legitimate governmental purpose." *Id.* Taxpayers did not allege that UMASD selected Taxpayers' properties based on their owners' lack of political power. Accordingly, UMASD's selection of Taxpayers' properties did not deliberately discriminate against an underrepresented group violating uniformity. *Id.*

Trial Court's Relied-Upon Cases

Finally, Taxpayers maintain the trial court relied upon cases that do not support its decision because the cases do not provide taxing districts a wholly unfettered right of appeal and each case is distinguishable from the facts alleged

herein. Specifically, Taxpayers claim that the trial court erred in citing *Vees v. Carbon County Board of Assessment Appeals*, 867 A.2d 742 (Pa. Cmwlth. 2005), and *Springfield II* to support a school district's unfettered right to appeal from tax assessments; and in relying on *Vees*, *In re Springfield School District*, 879 A.2d 335 (Pa. Cmwlth. 2005) (*Springfield I*), *Weissenberger* and *Springfield II* because those cases involved and were determined on facts that are not present herein.

First, the trial court did not rely on any of the above cases in dismissing Counts I (Injunctive Relief – UMASD), III (Injunctive relief-Keystone Realty) and IV (Declaratory Judgment-the District) of the Complaint.[3] Rather, the trial court granted the District's preliminary objections because Complaint Counts I, III and IV do not state a cause of action. The trial court opined:

> [Taxpayers] allege that [the District] ha[s] violated the Uniformity [C]lause of the Pennsylvania Constitution, which provides, inter alia, that 'all taxes shall be []uniform, upon the same class of subjects . . . .' PA. CONST. art. VIII, § I. However, there is no allegation in the Complaint that the taxes imposed by UMASD violate the Uniformity Clause of the Pennsylvania Constitution. Likewise, there is no allegation that the school district's millage, which is part of the overall real estate taxes, applies unequally to all assessed properties in the school district.
>
> The [Law] specifically provides that a taxing authority has the right to appeal the assessment of any property to the Court of Common Pleas. Simply stated, [Taxpayers'] claims concerning inequality in tax assessments and lack of uniformity do not state an independent cause of action against a school district since school districts do not set tax assessments. The [Board] has exclusive jurisdiction of tax assessments.
>
> Furthermore, this case has not been certified as a class action. [Taxpayers] state in Paragraph 3 of the Complaint that this action is a 'first-of-its kind in the Commonwealth .

[3] Count II (Negligence-Keystone Realty) will be discussed below.

> . . .' (Compl. ¶[]3). [Taxpayers] have no statutory or case authority to support their unprecedented assertion that there is a legal basis for an independent action seeking to enjoin a school district from exercising its right to appeal tax assessments due to an alleged inequality of tax assessments and a lack of uniformity. [Taxpayers] are seeking to avoid the statutory procedures established for the adjudication of tax assessment appeals. Issues concerning lack of uniformity can be properly raised in the tax assessment appeals where the county, township, school district, and board of assessment appeals are parties in the case.

Trial Ct. Op. at 3-4. This Court discerns no error in the trial court's reasoning. Taxpayers have no basis for bringing a lawsuit against the UMASD for assessing taxes against Taxpayers in violation of the Pennsylvania Constitution's Uniformity Clause when in fact UMASD was not assessing taxes, but rather exercising its statutory right to appeal from said assessments. In citing the cases that Taxpayers maintain are inapposite, the trial court was merely reciting the law that when the issue of appealing from tax assessments in violation of the Pennsylvania Constitution's Uniformity Clause has been raised during the litigation of the assessment appeal, the courts have held that the school district's actions did not violate the Pennsylvania Constitution's Uniformity Clause.

Taxpayers contend that the trial court erred in relying on *Vees* and *Springfield II* to support a school district's unfettered right to appeal from tax assessments because the *Downingtown* Court held that a "classification [] **not based on any legitimate distinction** between the targeted and non-targeted properties, [] is arbitrary, and thus, unconstitutional." *Id.* at 205 (emphasis added). However, the trial court did not cite the above cases for the proposition that a school district's right to appeal from assessments is absolute. Rather, it relied upon them for the proposition that where, as here, the school district has **reasonable and financial considerations of increasing its revenue**, the methods for identifying properties is not arbitrary, capricious or discriminatory.

Further, the distinctions Taxpayers seek to make in the above-cited cases are belied by the Complaint's allegations. For example, Taxpayers aver that *Weissenberger* does not apply because "[i]n *Weissenberger*, the school district selected certain apartment properties for assessment appeals based on a consultant's review of all apartment complexes in the district." Taxpayers' Br. at 27. "In other cases, this Court has approved selection methodologies based on the difference between sale prices and imputed fair market values of properties in the district." *Id.* Taxpayers maintain that

> the record contains **no evidence that [UMASD] used any methodology for selecting properties** for appeal. Rather, as alleged in the Complaint, [UMASD] retained Keystone [Realty] to **recommend commercial properties**, such as the [Taxpayers'] apartment buildings, for appeals. The [District is] not using any criteria. None of this Court's prior cases have approved discrimination without any selection criteria for choosing properties for assessment appeals.

Id. at 28 (citation omitted; emphasis added). Taxpayers conclude that

> although in some of the earlier cases this Court found no deliberate discrimination because the taxing districts acted from an economic motivation, that has no bearing on this case. . . . [T]he [District] did not have any rational basis for choosing **only commercial properties** for appeal; they did so based on the **nature of the property and the owners' political power**, in violation of the Uniformity Clause.

Id. at 32.

However, Taxpayers expressly alleged:

> 47. At a meeting of the School Board on June 5, 2011, the [UMASD], through its Board, voted to hire Keystone [Realty] to target **properties** for [UMASD] appeals.
>
> 48. Upon information and belief, pursuant to the contract between the School Board and Keystone [Realty], the School Board agreed to pay Keystone [Realty] a contingency fee of 25% of any **increased tax revenue** the

> School District generates through a Keystone [Realty]-assisted appeal.
>
> 49. This contingency fee arrangement creates for Keystone [Realty] an **economic interest** in recommending that [UMASD] target for appeal **high-value properties**, in disregard of the requirements of the Uniformity Clause.

R.R. at 15a (emphasis added). There is no allegation that UMASD requested Keystone Realty to seek **only apartment complexes or properties owned by non-residential voters**. To the contrary, based on Taxpayers' allegations, which we must accept as true, **increased tax revenue** is the motivation behind the consulting contract, and **high value properties** were the target. Thus, as Taxpayers' allegations do not support their purported distinctions, the cases the trial court cited are controlling.

Exhaustion of Administrative Remedies

Taxpayers next argue that the trial court erred in dismissing their claims on the basis of the administrative exhaustion of remedies doctrine. Specifically, Taxpayers contend that Pennsylvania case law demonstrates that Taxpayers were not required to pursue their Uniformity Clause challenge in tax assessment appeals, but instead could bring it as a separate equity action. Taxpayers further assert that individual assessment appeals cannot address Taxpayers' constitutional challenge and an equity action provides a preferable vehicle for their claims. The District rejoins that the remedies set forth in the Law are the mandatory and exclusive remedies to raise in assessment appeal matters.

Section 8854 of the Law provides in relevant part:

> **(a) Court of common pleas.--**
>
> (1) Following an appeal to the board, any appellant, property owner ***or affected taxing district may appeal the board's decision to the court of common pleas*** in the county in which the property is located in accordance with

42 Pa.C.S. § 5571(b) (relating to appeals generally) and local rules of court.

(2) In any appeal of an assessment the court shall make the following determinations:

(i) The market value as of the date the appeal was filed before the board. In the event subsequent years have been made a part of the appeal, the court shall determine the market value for each year.

(ii) The common level ratio which was applicable in the original appeal to the board. In the event subsequent years have been made a part of the appeal, the court shall determine the applicable common level ratio for each year published by the State Tax Equalization Board on or before July 1 of the year prior to the tax year being appealed.

. . . .

(6) In any appeal by a taxable person from an action by the board, the board shall have the power and duty to present a prima facie case in support of its assessment, to cross-examine witnesses, to discredit or impeach any evidence presented by the taxable person, to prosecute or defend an appeal in any appellate court and to take any other necessary steps to defend its valuation and assessment.

. . . .

(9) ***Nothing in this subsection shall:***

(i) Prevent an appellant from appealing a base-year valuation without reference to ratio.

(ii) ***Be construed to abridge, alter or limit the right of an appellant to assert a challenge under [S]ection 1 of Article VIII of the Constitution of Pennsylvania [the Uniformity Clause].***

(b) Appeals to Commonwealth Court or Supreme Court.--The board, or any party to the appeal to the court of common pleas, may appeal from the judgment, order or decree of the court of common pleas.

53 Pa.C.S. § 8854 (double emphasis added). Here, UMASD filed appeals from Taxpayers' properties' assessments to the Board. The Board denied the assessment appeals from which UMASD appealed to the trial court and which are currently pending in the trial court. Taxpayers in their Answers and New Matter raised the Uniformity Clause issue as they were permitted to do by statute.

Moreover, our Supreme Court has held that in order to obtain equity jurisdiction, taxpayers must: (1) raise a **substantial** constitutional issue, **and** (2) lack an adequate remedy through the administrative appeal process. *Beattie v. Allegheny Cnty.*, 907 A.2d 519 (Pa. 2006). Although the *Beattie* Court acknowledged that a substantial constitutional question historically exists in a facial challenge to the relevant taxing statute, the Court held that it could also be based solely upon the manner in which the governing taxing statute is applied. *Id.*

Here, however, Taxpayers have not raised a constitutional challenge to a taxing statute, ordinance or the application thereof. Rather, Taxpayers are challenging UMASD's right to appeal tax assessments. Thus, Taxpayers cannot meet the first requirement. It should be noted that Taxpayers did not raise a constitutional challenge to the assessment appeals statute. As explained above, while UMASD's right to appeal assessments is not unfettered, the case law establishes that where, as here, a school district has reasonable and financial considerations of increasing its revenue, their actions do not violate the Uniformity Clause. *Weissenberger.* It is the existence of a substantial question of constitutionality, not the mere allegation thereof, that is required.[4] *Beattie*; *Kowenhoven v. Allegheny Cnty.*, 901 A.2d 1003 (Pa. 2006); *Rochester & Pittsburgh Coal Co. v. Bd. of Assessment & Revision of*

[4] Preliminary objections are before us. However, as explained above, the Complaint does not support the existence of a substantial constitutional question as the allegations do not establish that UMASD deliberately discriminated against an underrepresented group. Had Taxpayers' allegations supported this averred conclusion, further inquiry would have been required.

Taxes of Indiana Cnty., 266 A.2d 78 (Pa. 1970). Accordingly, the trial court properly dismissed Taxpayers' Complaint.

Negligence

Duty

Lastly, Taxpayers argue that the trial court improperly dismissed their negligence claim because Keystone Realty owed Taxpayers a duty. The District rejoins that Keystone Realty owed no duty of care to Taxpayers; thus, no negligence cause of action exists.

Essentially, both parties agree that *Althaus v. Cohen*, 756 A.2d 1166 (Pa. 2000) is the controlling law on this issue.[5] Our Supreme Court in *Althaus* held that "[t]he primary element in any negligence cause of action is that the defendant owes a duty of care to the plaintiff." *Id.* at 1168. The Court explained that

> [t]he determination of whether a duty exists in a particular case involves the weighing of several discrete factors which include: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution.

Id. at 1169.[6] Concerning the first duty factor, Taxpayers assert that although there is no contract between the parties there is a relationship based on the analysis in *Sharpe v. St. Luke's Hospital*, 821 A.2d 1215 (Pa. 2003). In *Sharpe,* Federal Express had a contract with St. Luke's Hospital (St. Luke's) for drug testing its employees. Sharpe, a Federal Express employee, sued St. Luke's for its negligence in handling her test sample leading to a false positive result for cocaine. The *Sharpe* Court found that St.

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[5] Both parties cited cases which quote *Althaus* to support their respective positions.

[6] We will summarize the parties' arguments concerning each factor before addressing whether a duty exists.

Luke's owed a duty of care to the employee notwithstanding that she did not have a contract with St. Luke's. The *Sharpe* Court held: "Specifically, [the employee] personally presented herself to [St. Luke's], which was aware of the purpose of the urine screening; [St. Luke's], in turn, should have realized that any negligence with respect to the handling of the specimen could harm Sharpe's employment." *Id.* at 1219.

The District relies on *Wisniski v. Brown & Brown Insurance Co. of Pennsylvania*, 906 A.2d 571 (Pa. Super. 2006) to support its position that no relationship exists between Taxpayers and Keystone Realty. The *Wisniski* Court held that there are three categories of relationships: (1) an ordinary, arm's-length relationship; (2) an agency relationship; and (3) a confidential relationship. *Id.* The District maintains that because the contract between UMASD and Keystone Realty does not contain any obligation on the part of Keystone Realty to Taxpayers, none of the three categories exists.

In regard to the second duty factor, Taxpayers argue that because Keystone Realty acted in its own self-interest, i.e., maximizing its contingency fee, there can be no social utility in selecting Taxpayers' properties. The District, however, avers that the social utility in Keystone Realty assisting UMASD to increase revenue serves a legitimate government interest. "Regarding the third factor, duty arises only when one engages in conduct which foreseeably creates an unreasonable risk of harm to others." *R.W. v. Manzek*, 888 A.2d 740, 747 (Pa. 2005). Taxpayers argue that since Keystone Realty targeted their properties in violation of the Uniformity Clause, Keystone Realty should have foreseen the harm to Taxpayers' constitutional rights. The District retorts that Keystone Realty's actions did not create an unreasonable risk of harm to others because it was merely consulting with UMASD regarding the property assessment appeals.

The fourth duty factor weighs the consequence of imposing such a duty upon the actor. Taxpayers argue that imposing a duty on Keystone Realty to make only lawful recommendations has only positive consequences. The District maintains that imposing a duty on Keystone Realty to all taxpayers would be absurd, as it would prohibit UMASD from consulting with Keystone Realty, thus, preventing UMASD from participating in the permissible practice of appealing from assessments. Finally, Taxpayers argue that imposing a duty on Keystone Realty would promote the overall public interest, while the District counters it would not be in the public interest to prevent UMASD from engaging in a process expressly permitted by both statute and case law.

The trial court found Keystone Realty owed no duty to Taxpayers because "[t]here was no relationship between the parties whatsoever. [Taxpayers] and Keystone [Realty] are not contracting parties. The agreement between UMASD and Keystone [Realty] does not contain any obligation on the part of Keystone [Realty] to [Taxpayers]." Trial Ct. Op. at 8. Based on the three categories of relationships espoused in *Wisniski*, we agree. Moreover, we hold that the remaining factors established in *Althaus* weigh in Keystone Realty's favor. There is a social utility in Keystone Realty's assistance to UMASD to increase revenue that serves a legitimate government interest. The mere consultation with a school district does not create an unreasonable risk of harm to others. Imposing a duty on Keystone Realty to all taxpayers would prohibit UMASD from consulting with Keystone Realty, thus, preventing UMASD from participating in the practice of filing assessment appeals. Finally, it would not be in the public interest to bar UMASD from engaging in a process expressly permitted by statute and case law. Accordingly, the trial court properly dismissed Taxpayers' negligence claim on the basis that Keystone Realty did not owe Taxpayers a duty of care.

Economic Loss Doctrine

Taxpayers argue that assuming Keystone Realty did owe Taxpayers a duty of care, the trial court erred in dismissing their negligence claim on the basis of the economic loss doctrine. Specifically, Taxpayers contend that the trial court erred in ruling that Taxpayers failed to allege that Keystone Realty caused Taxpayers any injury, *i.e.*, Taxpayers did not allege any property damage or personal injury. Keystone Realty rejoins that since the only potential losses are economic due to the possible increased assessments, the trial court properly considered the economic loss doctrine.

"The economic loss doctrine provides, 'no cause of action exists for negligence that results solely in economic damages unaccompanied by physical injury or property damage.' *Adams v. Copper Beach Townhome C[mtys.], L.P.*, 816 A.2d 301, 305 (Pa.[]Super.[]2003)." *Excavation Techs., Inc. v. Columbia Gas Co. of Pa.*, 985 A.2d 840, 841 n.3 (Pa. 2009). Despite Taxpayers claim that they suffered the loss of their constitutional rights and that they had to defend against the assessment appeals to the Board and the trial court, we hold that the trial court properly dismissed Taxpayers' negligence claim for failure to allege a proper injury.[7]

Conclusion

Because Taxpayers' Complaint fails to state a claim for which relief can be granted, we hold that the trial court properly sustained the District's preliminary objections and dismissed the Complaint.

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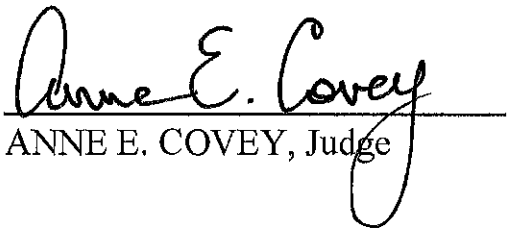
[7] The District adds a final argument in the event this Court finds that Keystone Realty owed Taxpayers a duty of care. The District claims that under the gist of the action doctrine, a party cannot base an action in tort on actions that arose in the course of the parties' contractual relationship. *See Bruno v. Erie Ins. Co.*, 106 A.3d 48 (Pa. 2014). Because there was no contract between Taxpayers and Keystone Realty, we hold that the gist of the action doctrine does not apply.

For all of the above reasons, the trial court's order is affirmed.



ANNE E. COVEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Valley Forge Towers Apartments N, LP; Morgan Properties Abrams Run Owner LP; KBF Associates, LP; Gulph Mills Village Apartments LP; and The Lafayette at Valley Forge LP, Appellants	:	
v.	:	
Upper Merion Area School District and Keystone Realty Advisors, LLC	:	No. 1960 C.D. 2014

ORDER

AND NOW, this 10th day of September, 2015, the Montgomery County Common Pleas Court's October 9, 2014 order is affirmed.

Anne E. Covey

ANNE E. COVEY, Judge

Certified from the Record

SEP 10 2015

and Order Exit

APPENDIX B

ORDER OF THE COURT SUSTAINING THE PRELIMINARY OBJECTIONS AND DISMISSING THE COMPLAINT WITH PREJUDICE, DATED OCTOBER 9, 2014

VALLEY FORGE TOWERS APARTMENTS N, LP; MORGAN PROPERTIES ABRAMS RUN OWNER LP; KBF ASSOCIATES LP; GULPH MILLS VILLAGE APARTMENTS LP; and THE LAFAYETTE AT VALLEY FORGE LP, Plaintiffs v. UPPER MERION AREA SCHOOL DISTRICT and KEYSTONE REALTY ADVISORS, LLC, Defendants	COURT OF COMMON PLEAS, MONTGOMERY COUNTY, PA NO. 2014-09870

ORDER

AND NOW this 9th day of OCT., 2014 upon consideration of the Preliminary Objections filed by Defendants Upper Merion Area School District and Keystone Realty Advisors, LLC, and the response filed thereto and after Oral Argument it is hereby ORDERED and DECREED that the Preliminary Objections are sustained and the Complaint is dismissed with prejudice.

2014-09870-0010 10/14/2014 11:54 AM #9996100
Order
Rcpt#Z2236008 Fee:$0.00
Mark Levy - MontCo Prothonotary

y the Court:

Edmund A. Moore
J.

Copies mailed 10/9/14 to:
John Summers, Esq.
Jessica O'Neill, Esq.
Wendy G. Rothstein, Esq.

M. Helms
Secretary

This order/judgment was docketed and sent on 10/14/2014 pursuant to Pa. R. C. P. 236.

APPENDIX C

OPINION ON ORDER SUSTAINING PRELIMINARY OBJECTIONS, DATED JANUARY 2, 2015

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

VALLEY FORGE TOWERS APARTMENTS N, LP; MORGAN PROPERTIES ABRAMS RUN OWNER, LP; KBF ASSOCIATES, LP; GULPH MILLS VILLAGE APARTMENTS, LP; and THE LAFAYETTE AT VALLEY FORGE, LP	:	Commw. Ct. No. 1960 CD 2014 Com. Pleas No. 2014-09870
v.	:	
UPPER MERION AREA SCHOOL DISTRICT and KEYSTONE REALTY ADVISORS, LLC	:	

OPINION

Moore, J. **January 2, 2015**

I. FACTS AND PROCEDURAL HISTORY

The question presented by this appeal is whether this Court erred in granting the Preliminary Objections of Upper Merion Area School District and Keystone Realty Advisors, LLC (collectively, "Defendants").

Morgan Properties Abrams Run Owner, LP, KBF Associates, LP, Gulph Mills Village Apartments, LP, the Lafayette at Valley Forge, LP, and Valley Forge Towers Apartments N, LP (collectively, "Plaintiffs") all own apartment buildings in Upper Merion Area School District ("UMASD"). UMASD filed annual assessment appeals with the Montgomery County Board of Assessment Appeals challenging the assessments of Plaintiffs' properties. The Board of Assessment denied the appeals and UMASD subsequently appealed to this Court. The appeals remain pending before the Montgomery County Court of Common Pleas.

The Plaintiffs allege in the complaint that UMASD and Keystone Realty Advisors, LLC ("Keystone") entered into a consulting contract for Keystone to recommend properties for UMASD to appeal. Plaintiffs further allege that, as a result of Keystone's recommendations, UMASD systematically selected and appealed commercial properties, including apartment buildings, while not appealing residential properties. Finally, Plaintiffs allege that UMASD's actions were part of a scheme between UMASD and Keystone to generate more tax revenue for UMASD which in turn would benefit Keystone since Keystone was paid a contingency fee of 25% of any increased revenue generated for UMASD. Plaintiffs claim that UMASD's appeal of commercial properties, but not residential properties, violates the Uniformity Clause of the Pennsylvania Constitution, Article VIII, Section 1.

On May 2, 2014, Plaintiffs filed a Complaint Seeking Declaratory Judgment, Injunctive Relief, and Damages ("Complaint"). On May 28, 2014, Defendants filed Preliminary Objections to which Plaintiffs filed an answer on June 24, 2014. The parties filed a Praecipe to Discontinue as to plaintiff Valley Forge Towers Apartments N, LP, removing that party as a plaintiff in the case. This Court heard argument on the Preliminary Objections on October 3, 2014, and subsequently sustained the Preliminary Objections by an Order dated October 9, 2014, dismissing the Complaint with prejudice. Morgan Properties Abrams Run Owner, LP, KBF Associates, LP, Gulph Mills Village Apartments, LP, and the Lafayette at Valley Forge, LP ("Appellants") appealed this Court's October 9, 2014 Order on October 27, 2014.

II. DISCUSSION

A. STANDARD OF REVIEW

A court will sustain a demurrer where it is clear and free from doubt that the law will not permit recovery under the alleged facts. *Marin v. Sec. of Commonwealth*, 41 A.3d 913, 914 n.2

(Pa. Cmwlth. 2013). When ruling on preliminary objections in the nature of a demurrer, a court must accept as true all well-pleaded facts and all reasonable inferences properly deduced from such facts. *Id.* However, a court does not have to accept conclusions of law. *Id.*

B. THIS COURT PROPERLY DISMISSED COUNTS I, III, AND IV OF THE COMPLAINT

The landowners in this case are appellees in tax assessment appeals pending before the Montgomery County Court of Common Pleas. Counts I and IV of the Complaint seek injunctive and declaratory relief, *inter alia*, to preclude the Upper Merion School District from pursuing the assessment appeals that have been taken against the owners of these four apartment buildings located in Upper Merion Township. It should be noted that the other taxing authorities, Upper Merion Township and the County of Montgomery, have not been joined in this action.

The four apartment building owners allege that Defendants have violated the Uniformity clause of the Pennsylvania Constitution, which provides, *inter alia*, that "[a]ll taxes shall be "uniform, upon the same class of subjects . . . ." PA. CONST. art. VIII, § 1. However, there is no allegation in the Complaint that the taxes imposed by UMASD violate the Uniformity Clause of the Pennsylvania Constitution. Likewise, there is no allegation that the school district's millage, which is part of the overall real estate taxes, applies unequally to all assessed properties in the school district.

The Consolidated County Assessment Law specifically provides that a taxing authority has the right to appeal the assessment of any property to the Court of Common Pleas. Simply stated, Appellants' claims concerning inequality in tax assessments and lack of uniformity do not state an independent cause of action against a school district since school districts do not set tax assessments. The Montgomery County Board of Assessment Appeals has exclusive jurisdiction of tax assessments.

Furthermore, this case has not been certified as a class action. Appellants state in Paragraph 3 of the Complaint that this action is a "first-of-its kind in the Commonwealth . . . ." (Compl. ¶ 3). Appellants have no statutory or case authority to support their unprecedented assertion that there is a legal basis for an independent action seeking to enjoin a school district from exercising its right to appeal tax assessments due to an alleged inequality of tax assessments and a lack of uniformity. Appellants are seeking to avoid the statutory procedures established for the adjudication of tax assessment appeals. Issues concerning lack of uniformity can be properly raised in the tax assessment appeals where the county, township, school district, and board of assessment appeals are parties in the case. Certainly, Counts I and IV of the Complaint do not state a cause of action, and this Court properly dismissed these counts.

Moreover, the Commonwealth Court has consistently held that the Appellants' claims have no merit as a matter of law, even if properly raised in the litigation of a tax assessment appeal. School districts have a clear, unambiguous right to appeal tax assessments. The Consolidated County Assessment Law provides:

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

53 Pa.C.S. § 8855 (emphasis added). A school district is identified as a "taxing district" in the Consolidated County Assessment Law. *See* 53 Pa.C.S. § 8802. The courts have also recognized that this right exists. *See Weissenberger v. Chester Cnty. Bd. of Assessment Appeals*, 62 A.3d 501 (Pa. Cmwlth. 2013); *Appeal of Springfield Sch. Dist.*, 879 A.2d 335 (Pa. Cmwlth. 2005); *Vees v. Carbon Cnty. Bd. of Assessment Appeals*, 867 A.2d 742 (Pa. Cmwlth. 2005); *Millcreek Twp. V. Erie Cnty. Bd. of Assessment Appeals*, 737 A.2d 335 (Pa. Cmwlth. 1999).

The most recent of the foregoing decisions, *Weissenberger*, involves facts which are strikingly similar to the case *sub judice*. In *Weissenberger*, a school district appealed the assessment of two properties that comprised an apartment complex within the school district by filing appeals with the board of assessment. The school district came to file the appeals because of its participation in an organization that hired a real estate appraisal firm to review the market values and assessments for all apartment complexes in the county for the 2004 tax year. *Weissenberger*, 62 A.2d at 503. The real estate appraisal firm generated a report that identified apartment complexes that were potentially under-assessed within the county, and, according to that report, five of the potentially under-assessed apartment complexes comprising a total of six tax parcels were located within the school district. *Id.* The real estate appraisal firm recommended that the school district take appeals only involving the two parcels that were owned by the taxpayer. *Id.*

The school district, based upon the potential for increased tax revenue, asserted that it made a "business decision" to accept the recommendation from the real estate appraisal firm and appealed the taxpayer's assessments. *Id.* The school district did not take any other assessment appeals that year. *Id.*

In *Weissenberger*, the taxpayer challenged "the application of the statutory right of a taxing district to appeal any assessment within its jurisdiction, under the circumstances of the case." *Id.* at 505. Also, in *Weissenberger*, the taxpayer "advances the contention that the under-assessment, through which it pays comparatively *less* of the cost of local government, enjoys constitutional protection from [s]chool district's appeal." *Id.* The court held in *Weissenberger* that "it is easy to envision a rational basis for the [s]chool [d]istrict taking these appeals:

sufficient increased revenue to justify the costs of the appeals." The court added that "[j]udicious use of resources to legally increase revenue is a legitimate government purpose." *Id.*

The court in *Weissenberger* concluded the following: "[h]ere, as in the cases discussed above, the school district is expressly authorized to initiate assessment appeals, and it is not an entity clothed with the power to revise assessments of assessment ratios, such that lodging an appeal constitutes an impermissible spot assessment. Moreover, as both *Vees* and *Springfield* demonstrate, adopting a methodology that narrows the class of properties evaluated for appeal based upon other considerations such as financial and economic thresholds or by classifications of property do not as a matter of law demonstrate deliberate, purposeful discrimination." *Weissenberger*, 62 A.3d at 508-509. The filing of selective appeals does not result in a uniformity violation, and it is not deliberate discrimination. *See id.*

The reasoning in *Weissenberger* is consistent with the Commonwealth Court's analysis in *Appeal of Springfield School District*, 879 A.2d at 341. In that case, the court found a school district's appeal of a tax assessment ". . . was initiated by an entity granted specific authority to appeal tax assessments in the same manner as an individual property owner." *Id.* Additionally, the court held that the statutory law providing taxing authorities with the right to file assessment appeals "places no restrictions on the 'methodology' employed by a school district or by an individual property owner in determining whether to appeal." *Id.* Similarly, the court in *Vees*, 867 A.2d at 749, held that "[a]s a matter of law, the [s]chool [d]istrict's use of the statutory appeal mechanism available uniformly to all interested parties does not amount to deliberate, purposeful discrimination."

The Commonwealth Court reaffirmed this legal analysis in its holding in *In re Springfield Sch. Dist.*, 101 A.3d 835 (Pa. Cmwlth. 2014). In *In re Springfield School District*, the owner of

two parcels of property appealed from a trial court's determination of fair market value and assessed values of the owner's property. *Id.* at 838. The owner argued, *inter alia*, that the school district violated the Uniformity Clause by selecting the owner's properties for appeal. *Id.* The Commonwealth Court affirmed the trial court's determination of fair market and assessed values, and rejected the constitutional challenge to the school district's appeals. *Id.* at 850. In its opinion, the court cited *Vees* and *Weissenberger* for the proposition that a school district had a rational basis for selecting properties for appeal based on financial and economic thresholds. *Id.* at 848. With regard to the constitutional challenge, the court concluded that the school district's demarcation of a $500,000 threshold "was based on the reasonable financial and economic considerations of increasing its revenue and the costs of filing assessment appeals. The $500,000 difference between the sale price and the implied market value represented $9,000 to $11,000 in additional tax revenue, which justified the costs of appeals." *Id.* at 849. The court concluded that this method of identifying properties for appeal was not arbitrary, capricious, or discriminatory. *Id.* The fact that the threshold would have disproportionately subject commercial properties to assessment appeals did not alter the court's conclusion, as the Uniformity Clause does not require equalization across all sub-classifications of real property. *Id.*

The case law and statutory law are clear. UMASD filed its assessment appeals in conformity with the law, and thus the exercise of its right to appeal did not violate the Pennsylvania Constitution. [1]

[1] In Count III of the Complaint, Appellants allege that Keystone engaged in unconstitutional conduct in advising UMASD to appeal the tax assessments of Appellants' properties. Pursuant to the foregoing analysis, and in particular the language of *Weissenberger*, Keystone did not act unconstitutionally in advising UMASD to take constitutionally proper appeals. *Cf. Weissenberger*, 62 A.3d at 508-509.

C. THIS COURT PROPERLY DISMISSED COUNT II OF THE COMPLAINT

To successfully bring a cause of action for negligence in Pennsylvania, a plaintiff is required to show: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct for the protection of others against unreasonable risks; (2) a failure on the person's part to conform to the standard required; (3) a breach of the duty; (4) a reasonably close causal connection between the conduct and the resulting injury; and (5) actual loss or damage resulting to the interest of another. *Reformed Church of Ascension v. Theodore Hooven & Sons, Inc.*, 764 A.2d 1106, 1109-10 (Pa. Super. 2000); *see also Brandon v. Ryder Truck Rental, Inc.*, 34 A.3d 104, 108 (Pa. Super. 2011); *Cooper v. Frankford Health Care System, Inc.*, 960 A.2d 134, 140 (Pa. Super. 2008).

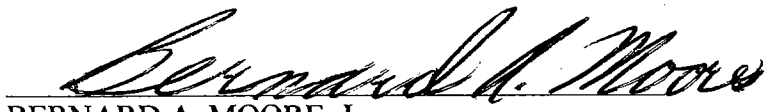
As the courts have held, "[t]he initial element in any negligence cause of action is the first: that the defendant owes a duty of care to the plaintiff. The existence of a duty is a question of law for the court to decide. In negligence cases, a duty consists of one party's obligation to conform to a particular standard of care for the protection of another. This concept is rooted in public policy." *Wisniski v. Brown & Brown Ins. Co. of PA*, 906 A.2d 571, 576 (Pa. Super. 2006) (citing *R.W. v. Manzek*, 888 A.2d 740, 746 (Pa. 2005)). The courts have held that "[t]he primary element in any negligence cause of action is that the defendant owes a duty of care to the plaintiff." *Althaus v. Cohen*, 756 A.2d 1166, 1168 (Pa. 2000). Accordingly, if there is no duty, there is no negligence cause of action. Here, Keystone owed no duty of care to Appellants. There was no relationship between the parties whatsoever. The Appellants and Keystone are not contracting parties. *See Wisniski*, 906 A.2d at 576. The agreement between UMASD and Keystone does not contain any obligation on the part of Keystone to the Appellants. Appellants'

negligence claim against Keystone also fails because Appellants failed to allege that Keystone caused any injury to Appellants. Appellants allege no property damage or personal injury as a result of Keystone's actions. Accordingly, the negligence claim against Keystone was properly dismissed.

III. CONCLUSION

This Court properly dismissed with prejudice all claims of the Appellants against UMASD and Keystone. This determination should be **AFFIRMED**.

BY THE COURT:



BERNARD A. MOORE, J.

Date: January 2, 2015
Cc: John S. Summers, Esq.
Jessica R. O'Neill, Esq.
Wendy G. Rothstein, Esq.

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IN THE SUPREME COURT OF PENNSYLVANIA

Valley Forge Towers Apartments N, LP; Morgan Properties Abrams Run Owner LP; KBF Associates, LP; Gulph Mills Village Apartments LP; and The Lafayette at Valley Forge LP	:	49 MAP 2016
v.		
Upper Merion Area School District and Keystone Realty Advisors, LLC		
Appeal of: Valley Forge Towers Apartments N, LP; Morgan Properties Abrams Run Owner LP; KBF Associates, LP		

PROOF OF SERVICE

I hereby certify that this 8th day of July, 2016, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served:	Wendy G. Rothstein
Service Method:	Commercial Carrier: Federal Express
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Representing:	Appellee Keystone Realty Advisors, LLC Appellee Upper Merion Area School District

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

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/s/ John S. Summers

(Signature of Person Serving)

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