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**IN THE SUPREME COURT OF PENNSYLVANIA**
**MIDDLE DISTRICT**

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No. 49 MAP 2016

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**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,**

**v.**

**Upper Merion Area School District and Keystone Realty Advisors, LLC,**

Appeal of: Morgan Properties Abrams Run Owner LP; KBF Associates, LP

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# BRIEF OF *AMICUS CURIAE* THE PENNSYLVANIA SCHOOL BOARDS ASSOCIATION In Support of Appellees

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**Appeal from the September 10, 2015 Opinion and Order of the Commonwealth Court of Pennsylvania in Appeal No. 1960 C.D. 2014, Affirming the October 9, 2014 Order of the Court of Common Pleas of Montgomery County, Civil Division, No. 2014-09870**

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## STATEMENT OF INTEREST OF AMICUS CURIAE

Your Amicus Curiae the Pennsylvania School Boards Association ("PSBA") is a voluntary non-profit association whose membership includes the 500 local school districts and 29 intermediate units of this Commonwealth, numerous area vocational technical schools and community colleges, and the members of the boards of directors of those public school entities. The mission of the Pennsylvania School Boards Association, organized in 1895 and the first such association in the Nation, is to promote excellence in school board governance through leadership, service and advocacy for public education. The efforts of PSBA in assisting local school entities and representing the interests of effective and efficient governance of our public schools also benefit taxpayers and the general public interest in education of our youth.

In that capacity, PSBA endeavors to assist state and federal courts in selected cases presenting important legal issues of statewide or national significance, by offering benefit of the Association's statewide and national perspective, experience and analysis relative to the legal, policy, management, liability, fiscal, ethical and other considerations, ramifications and consequences that should inform any resolution of the particular disputed issues in such cases. For decades, PSBA's informed insight, thorough research and careful legal

analysis have made PSBA a respected and valued participant in state and federal appellate proceedings involving public schools.

PSBA files this amicus curiae brief in support of Appellees pursuant to Pa.R.A.P. 531(b)(i), in order to offer the Court PSBA's perspective about the importance of the ability of school districts and other taxing authorities to appeal from tax assessments, important not only to the support of public education programming, but also to the pursuit of uniformity and fairness in the system of local real estate taxation. In that regard, PSBA hopes to assist the Court in seeing through the smoke and mirrors conjured up by Appellant taxpayers in an effort to cast doubt on both the constitutionality of such appeals and the methods used by school districts to determine when appeals should be taken so as to effectively focus precious resources where the benefit is greatest.

Accordingly, with this brief your *Amicus* Curiae PSBA urges the Court to reject the arguments of Appellants and to affirm the decision of the Commonwealth Court in this case.

## STATEMENT OF CONCURRENCE IN PRELIMINARY MATTERS

Your *Amicus Curiae,* PSBA, concurs in such statements as are made in the brief of Appellee Upper Merion School District regarding Jurisdiction, the Order or Other Determination in Question, Scope and Standard Of Review, Questions Involved and Statement of the Case.

## SUMMARY OF ARGUMENT

This case is about fairness and about good government in the operation of public school systems. A school district must raise the bulk of the funds necessary to provide for the educational needs of the community's children, while exercising due regard for the economic capacity of the community. But when a school district appeals the assessment of an undervalued property, it is about more than just enhancing revenue. School districts and other units of local government must at all times also strive to build and maintain a sense among taxpayers that there is integrity and fairness in the manner in which the tax burdens are apportioned, and great care taken in how their collective contributions are expended.

When a property owner evades or is excused by virtue of underassessment from paying its proportionate fair share of the burden of supporting governmental services, the remaining property owners must pay a higher share. Individual taxpayers who are forced to subsidize the share of under-assessed properties have no direct means to challenge underassessments except to depend on the school district or municipality to serve as their voice.

Completely missing from the arguments of Appellant taxpayers is any theory at all as to how a taxpayer found to be paying less than a fair share of the burden at the expense of other taxpayers has any constitutional, statutory or other right to continue to pay less than a fair share, or how that could be considered fair

and reasonable. Instead, Appellant taxpayers repeatedly suggest that to make up for the part of their fair share they are not paying, the School District should raise tax rates on the entire community if more revenue is needed. The goal of such appeals is the opposite---to avoid tax hikes as much as possible by plugging holes through which revenue that should be available for educational needs appears to be escaping.

This Court has never questioned the constitutionality of the statutory right of taxing bodies to appeal from real estate tax assessments in the same manner as property owners themselves may do, nor has it ever suggested that such appeals are the enemy of uniformity. Quite to the contrary, this Court has explicitly recognized that the correction of under or over-assessments via such appeals, whether the appeal is by a taxpayer or by a tax-levying government unit, is a tool that helps to achieve uniformity rather than detract from it, and that when periodic county-wide reassessments fall short of maintaining uniformity, the appeal process as a tool for making up some of the difference is ineffective if it is completely one-sided.

There is likewise no basis for suggesting that there is anything unconstitutional about a school district's decision to use its precious financial resources to pursue appeals only where the potential return in terms of enhanced revenue is sufficient to justify the cost of litigation, and where the positive impact for other taxpayers forced to subsidize under-assessed properties is the greatest. If

significantly under-assessed properties are an offense to uniformity and a burden on other taxpayers that undermines community regard for the fairness of the tax structure, what possibly could be unreasonable or unlawful about focusing the school district's finite resources on the most glaring examples?

Time and time again this Court has refused to disturb decisions of the Commonwealth Court explaining that school districts and municipalities do not assess property for tax purposes, that their appeals of assessments do not constitute spot assessments, that they are not required to appeal every assessment, and that there is no statutory or constitutional infirmity in applying various financial and economic considerations in determining when such appeals should be filed. There is nothing about this case that should lead to a different result.

## ARGUMENT

NEITHER THE STATUTORY RIGHT OF SCHOOL DISTRICTS TO APPEAL TAX ASSESSMENTS IN THE SAME MANNER AS PROPERTY OWNERS, NOR THE APPLICATION OF REASONABLE FINANCIAL AND PRACTICAL CONSIDERATIONS IN DETERMINING WHEN SUCH APPEALS SHOULD BE TAKEN PRESENTS ANY CONSTITUTIONAL INFIRMITY.

Your *amicus curiae* the Pennsylvania School Boards Association files this brief in support of the positions of the Appellee Upper Merion School District, and urges that the decision of the Commonwealth Court in this case be affirmed.

This case is about fairness; the ultimate goal of the Uniformity Clause of Pennsylvania's Constitution, Article VIII, § 1. It is also about good government in the operation of public school systems. A school district must raise the bulk of the funds necessary to provide for the educational needs of the community's children, while exercising due regard for the economic capacity of the community, but the issues at the heart of this case are about more than just enhancing revenue. In raising funds and expending them, school districts and other units of local government must at all times also strive to build and maintain a sense among taxpayers that there is integrity and fairness in the manner in which the tax burdens are apportioned, and great care taken in how their collective contributions are expended.

As this Court has recognized since the Uniformity Clause was in its infancy, when a property owner evades or is excused from paying its proportionate fair

share of the burden of supporting governmental services, the remaining property owners must pay a higher share. Court has observed:

> Without intending to question complainant's motives in anything that he did or omitted to do in the premises, it may be confidently asserted that in every community there are, and probably always will be, those who are anxious to shirk their share of the public burdens, and thereby cast the same upon others.

*Appeal of Van Nort*, 121 Pa. 118, 127–28, 15 A. 473, 473–75 (1888). Two decades later, this Court further observed:

> While every tax is a burden, it is more cheerfully borne when the citizen feels that he is only required to bear his proportionate share of that burden measured by the value of his property to that of his neighbor. 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. In Pennsylvania the framers of the new Constitution embodied this principle in our organic law in terms so plain that no one should misunderstand its meaning or doubt its application, and the people by the adoption of that instrument placed the seal of their approval upon a system of taxation which has for its corner stone uniformity in the valuation, levy, and collection of all taxes.

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

Notwithstanding all of the arguments, theories and what amounts to *de hors*-the-record, un-cross-examined expert testimony in economics proffered by Appellants and their supporting amici, there is something critical missing: any theory at all as to how a taxpayer found to be paying less than a fair share of the burden at the expense of other taxpayers has any constitutional, statutory or other

right to continue to pay less than a fair share, or how that could be considered fair and reasonable. Instead, Appellant taxpayers repeatedly suggest that to make up for the part of their fair share they are not paying, the School District should raise tax rates on the entire community if more revenue is needed. Brief of Appellants, pp. 12, 44, 51, 53.

Of course, that is the complete opposite of the goal the School District in this case and many other school districts in the Commonwealth seek to attain by appealing the assessment of properties that have been determined by various means to be significantly under-assessed. To capsulize the bottom line of what is explained in the PSBA study cited by Appellant taxpayers, Brief of Appellants at p. 51 fn. 27[1], the goal instead is to avoid tax hikes as much as possible by plugging holes through which revenue that should be available for educational needs appears to be escaping.

In similar fashion to the ridiculous suggestion that raising taxes generally is a preferable approach to asking under-assessed taxpayers to pay a fair share, the web of legal reasoning woven by Appellant taxpayers also depends entirely on turning logic and this Court's precedent completely inside out. This Court has never, as Appellants assert, questioned the constitutionality of the statutory right of

[1] *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 September 7, 2016).

taxing bodies to appeal from real estate tax assessments in the same manner as property owners themselves may do, nor has it ever suggested that such appeals are the enemy of uniformity. Quite to the contrary, this Court has explicitly recognized that the correction of under or over-assessments via such appeals, whether the appeal is by a taxpayer or by a tax-levying government unit, is a tool that helps to achieve uniformity rather than detract from it. See, e.g., *Clifton v. Allegheny Cty.*, 600 Pa. 662, 711, 969 A.2d 1197, 1227-1228 (2009).

The ability of Pennsylvania taxpayers to appeal from an assessment of their property that they believe is too high long pre-dates the Uniformity Clause, and has existed in one form or another at least since 1834 if not earlier. See, e.g., Act of April 15, 1834, P.L. 509, No. 232 ("An Act relating to county rates and levies and township rates and levies"), §§ 9-16. Eventually, taxpayers were allowed to appeal further from the decisions of county commissioners on their appeals, to the courts of common pleas by virtue of the Act of April 20, 1876, P.L. 44, No. 32 ("An Act Authorizing appeals from assessments in this commonwealth to the court of common pleas"), and later, to the Superior and Supreme Courts by virtue of the Act of June 26, 1901, P.L. 601, No. 296 ("An Act Authorizing appeals from the decision of the various courts of common pleas, in assessment of taxes case, to the Supreme or Superior Court of the Commonwealth"). This has existed ever since in

successive codifications of the tax assessment laws, now currently found at 53 Pa.C.S. §§ 8844, 8854 in the Consolidated Tax Assessment Law.

But it was not until 1921 that a reciprocal right of appeal first was given to the taxing bodies themselves, by the Act of May 10, 1921, P.L. 441, No. 214 ("An Act Authorizing boroughs, townships, school districts, and poor districts to appeal from assessments of property or other subjects of taxation for their corporate purposes"). This right also has existed ever since in successive codifications of the tax assessment laws, and is now currently found at 53 Pa.C.S. §§ 8854, 8855.

The available legislative record sheds no light on what may have prompted this addition in 1921, except to indicate that the legislation originating as Senate Bill No. 936 sped from introduction to final passage in a mere seventeen days, with unanimous approval in both houses of the General Assembly. See, *History of Senate Bills-Also House Bills in the Senate*, Pennsylvania General Assembly (1921). However, an observation made more recently by this Court in Clifton might explain why the General Assembly ninety-five years ago apparently considered it a "no-brainer" to give taxing bodies the right to appeal from assessments:

> Furthermore, successful taxpayer appeals do not increase the assessments of under-assessed properties, whose owners have no reason to appeal. Assessments of under-assessed properties are only "forced" into conformity with the county CLR by an appeal of an aggrieved municipal entity, most often the school district, and the

> extent to which taxing bodies pursue assessment appeals varies from municipality to municipality.

*Clifton v. Allegheny Cty.*, 600 Pa. at 713, 969 A.2d at 1228. In short, when periodic county-wide reassessments fall short of maintaining uniformity, the appeal process as a tool for making up some of the difference is ineffective if it is completely one-sided. Implicit in this observation is the fact that individual taxpayers who are forced to subsidize under-assessed properties have no direct means to challenge underassessments other than to depend on the school district or municipality to be their voice.

In arguing that a taxing body's decision to pursue this mechanism somehow poses a threat to uniformity, Appellant taxpayers distort what this Court said both in Clifton and in *Downingtown Area Sch. Dist. v. Chester Cty. Bd. of Assessment Appeals*, 590 Pa. 459, 913 A.2d 194 (2006). The statement Appellants wave as the foundational banner for this claim is this:

> 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.

*Downingtown*, 590 Pa. 459, 474, 913 A.2d 194, 204. What Appellant taxpayers prefer would remain obscured by smoke and mirrors is that what really caused the uniformity problem in Downingtown was not the taxing body's taking of an appeal

in and of itself, but a combination of other facts and statutory quirks that then came into play.

The factual causes of the problem in Downingtown were (1) the county's choice to use a base year valuation system rather than an actual value system; (2) the absence of a more recent county-wide reassessment; (3) the county's choice to set the Established Predetermined Ratio (EPR) at 100%; and (4) the economic happenstance that the Common Level Ratio (CLR) indicating the overall relationship between assessed value in the county and actual market value was almost, but not quite, 15% below the EPR. The causational statutory quirks were the requirements, only in the case of appeals, that (1) the board or a court must base any adjusted assessment on the current actual (market) value rather than the base year value; and (2) it is the EPR rather than the CLR that must be applied to the actual value unless the CLR varies from the EPR by more than 15%. 53 Pa.C.S. §§ 8844, 8854.[2] It should be noted that these same quirks come into play whether an appeal is filed by a taxing body or by a taxpayer.

It is conclusively telling that the uniformity concerns resulting from these factors led this Court in Downingtown to declare unconstitutional only the mandatory application in appeals of the EPR to current market value as described

[2] Citations are to the currently applicable provisions; the corresponding provisions in the predecessor statute cited in Downingtown were repealed by the Act of October 27, 2010, P.L. 895, No. 93.

above, but not the statutory provision allowing appeals by taxing bodies to appeal. *Downingtown*, 590 Pa. at 475, 913 A.2d at 204. Just as importantly, as a consequence of this Court's ruling in Downingtown, the uniformity concern presented there no longer exists.

The subsequent observations of this Court in Clifton about the salutary impact upon uniformity of appeals by either taxpayers or taxing bodies must erase any doubt on this score:

> 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 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. 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.

*Clifton*, 600 Pa. at 712, 969 A.2d at 1227–28. Such appeals simply were not enough to overcome the other systemic causes of non-uniformity.

Appellant's second line of attack is equally without basis in logic or law---the mind-boggling assertion that there could be something unfair or

unconstitutional about a school district's decision to use its precious financial resources to pursue appeals only where the potential return in terms of enhanced revenue is sufficient to justify the cost of litigation, and where the positive impact for other taxpayers forced to subsidize under-assessed properties is the greatest. If significantly under-assessed properties are an offense to uniformity and a burden on other taxpayers that undermines community regard for the fairness of the tax structure, what possibly could be unreasonable or unlawful about focusing the school district's finite resources on the most glaring examples?

If in fact there are lower-value properties that also are under-assessed, it is not the school district's doing, and as observed by this Court in Clifton, it is unfair to try to shift the burden upon school districts to fix that. *Clifton*, 600 Pa. at 712, 969 A.2d at 1227–28. This Court observed in Downingtown that attempting to evaluate the assessment-to-value ratio of every parcel in the taxing district, as Appellant taxpayers insist the school district must do, would be a practical impossibility. *Downingtown*, 590 Pa. at 467, 913 A.2d at 199.

Moreover, as this Court explained long ago:

> [A] taxpayer is not entitled to have his assessment reduced to the lowest ratio of assessed value to market value to which he could point in the taxing district if such lowest ratio does not reflect the common assessment level which prevails in the district as a whole.

*Deitch Co. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cty.*, 417 Pa. 213, 219, 209 A.2d 397, 401 (1965).

This is entirely consistent with this Court's teachings concerning the application of the Uniformity Clause: "Taxation, however, is not a matter of exact science; hence absolute equality and perfect uniformity are not required to satisfy the constitutional uniformity requirement . . . [s]ome practical inequalities are obviously anticipated, and so long as the taxing scheme does not impose substantially unequal tax burdens, rough uniformity with a limited amount of variation is permitted." *Clifton*, 600 Pa. at 685, 969 A.2d at 1210 (collecting cases; internal citations omitted).

The Commonwealth Court has repeatedly explained that school districts and municipalities do not assess property for tax purposes, that their appeals of assessments do not constitute spot assessments, that they are not required to appeal every assessment, and that there is no statutory or constitutional infirmity in applying various financial and economic considerations in determining when such appeals should be filed. See, e.g., Weis*senberger v. Chester Cty. Bd. of Assessment Appeals,* 62 A.3d 501, 507 (Pa. Commw. Ct. 2013), appeal denied, 621 Pa. 685, 76 A.3d 540 (2013); *In re Penn–Delco School District*, 903 A.2d 600 (Pa.Cmwlth.2006), appeal denied, 591 Pa. 739, 921 A.2d 499 (2007); *In re Springfield School District*, 879 A.2d 335 (Pa.Cmwlth.2005); *In re Springfield Sch. Dist. (Springfield II)*, 101 A.3d 835 (Pa. Commw. Ct. 2014), reargument denied (Nov. 7, 2014), appeal denied, 121 A.3d 497 (Pa. 2015); *Vees v. Carbon County*

*Board of Assessment Appeals*, 867 A.2d 742 (Pa.Cmwlth.2005) (en banc), appeal denied, 595 Pa. 713, 939 A.2d 891 (2007), *Millcreek Township School District v. Erie County Board of Assessment Appeals*, 737 A.2d 335 (Pa.Cmwlth.1999), appeal denied, 563 Pa. 668, 759 A.2d 389 (2000).

As the foregoing citations indicate, time and time again this Court has declined to disturb the Commonwealth Court's conclusions on these points. There is no reason to do anything differently in this case.

## CONCLUSION

For the foregoing reasons, as well as those set forth in the brief of Appellee Upper Merion School District, the decision of the Pennsylvania Commonwealth Court should be affirmed.

Respectfully submitted,

*/s/ Stuart L. Knade*

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