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Assessors' Association of Pennsylvania

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CCAP
COUNTY COMMISSIONERS Association of Pennsylvania

An affiliate of the County Commissioners Association of Pennsylvania

Uniformity Requirements: Taxing District Appeals

By Joan Righter Price, Esquire
Eastburn and Gray PC and AAP Solicitor

On July 5, 2017 the Pennsylvania Supreme Court decided *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. District, 163 A.3d 962 (Pa. July 5, 2017),* a landmark case involving challenges to a taxing district's ability to appeal assessments. A group of taxpayers filed a Complaint for Declaratory Judgement and a Petition for Preliminary Injunction against the Upper Merion Area School district and Keystone Realty Advisors, a private appraisal group hired by the school district to provide consulting services on tax assessment matters.

The plaintiff-taxpayers are several owners of apartment complexes located in the district that were the subject of assessment appeals filed by the district based on the recommendations of Keystone. Taxpayers alleged that the school district violated their constitutional rights to Equal Protection and uniformity of taxation when the district decided to appeal the assessments of only some of the commercial properties located in the district while ignoring single-family residential properties. The taxpayers' action also included a negligence claim against Keystone Realty Advisors regarding the methods used to identify potential assessment appeals for the school district. Defendants filed Preliminary Objections arguing that the taxpayers had not exhausted their statutory remedies and that the court should not exercise its equitable jurisdiction in this matter because taxpayers had not stated a substantial constitutional question. Plaintiff's complaint alleged that the most recent countywide reassessment of property occurred in 1996. It also stated that the school district contains commercial, industrial, and single-family properties as well as multi-family apartments but only some of the commercial properties had their assessments appealed by the school district. One of the factual allegations set forth in the complaint, accepted as true for purposes of ruling on the preliminary objections, was that 80% of the single-family homes in the school district have assessment ratios below the county's common level ratio but the school district did not file any appeals of the assessments of single-family homes. The school district countered that the General Assembly enacted the statutory right of taxing districts to appeal the assessments of properties within their boundaries and the courts have previously decided that the right of a taxing district to appeal is subject to the same procedures and have the same effect as taxpayer appeals. *See Title 53 Pa. C.S.A. §8855.*

The school district's position was that prior decisions have permitted taxing districts to pursue assessment appeals of only some properties within the district as long as the district can demonstrate a rational basis for the appeals filed. See *Weissenberger v. Chester County Board of Assessment Appeals, 62 A3d 501 (Pa.Cmwlth.,2012)*. The "rational basis" argued by the school district was a cost-benefit analysis of how much it would cost the school district in attorneys and appraisers' fees to appeal weighed against the potential

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AAP Education Calendar

Fall 2018 CPE Classes
Courtyard by Marriott
State College
Intro - September 10 – 14
Site/Market - September 17 – 21
Cost - September 24 – 28
Income - October 1 – 5

2018 Fall Conference
November 15 - 16
Kalahari Resort

Fall 2018 CPE Review
CCAP Office, Harrisburg
November 28 - 30

Spring 2019 CPE Classes
CCAP Office, Harrisburg
Intro - March 4 - 8
Income – 11 - 15
Cost – March 18 - 22
Site/Market - March 25 - 29

2019 Annual Conference
Sheraton Station Square, Pittsburgh
April 24 - 26

CPE Class Review
CCAP Office, Harrisburg
June 3 - 5

** Check the AAP website, www.paassessors.org, for more details*

What's Inside

President's Message, Legislative Update, AAP People

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President's Message

Hi Everyone!

Well it seems like spring has finally arrived in Pennsylvania. I know that some of you in the Southeast probably wondered if it ever would. I hope all that attended the Conference at the Radisson Hotel, Valley Forge had a good time. I think the Conference Planning Committee did a great job!

I want to take this opportunity to thank Larry Shubert for his service as president this past year. Larry arranged a meeting with the IAAO Executive Director and President Elect on March 6th. JR Hardester, Mark Kellerman and I were able to travel to Philadelphia to attend the meeting. I really enjoyed making the trip with them. JR is working on some exciting possibilities for the AAP and IAAO in the future. Stay tuned for updates!

It has been a busy year for AAP. The Assessment Law Subcommittee members worked hard on projects in conjunction with the Local Government Commission and CCAP. On April 16, 2018 the Local Government Commission's Assessment Reform Task Force voted unanimously to recommend the "Model RFP and Contracting Guidelines For County Reassessment Services" to the Local Government Commission on May 23rd. Steve Howe chaired that project; hats off to Steve, Danette Magee and all of the subcommittee members for a job well done! "The Self-Evaluation Guide" was reviewed by the Task Force on June 4th and approved by the Local Government Commission on June 13th. Josh Zeyn and I co-chaired the Self-Evaluation Guide Subcommittee. Thank you to all of the subcommittee members for their dedication to the project!

I would encourage all of you to become active within your chapter and on the Board of Governors. It has been a very rewarding experience for me both professionally and personally. I'm sure it would be for you as well.

Have a great summer! Hope to see you at the Fall Conference in November at the Kalahari in Monroe County.

Deb

Deb Crawford, CPE
AAP President



Legislative Update

By Jonathan B. Schuck, Chair
Government Information Committee and
Director of Assessment/Tax Claim, Chester County

Greetings fellow assessment professionals throughout the Commonwealth of Pennsylvania. By the time you receive this issue of the AAP Journal, it will be well into the summer season. The AAP remains committed to meeting the complex and diverse challenges encountered with a combination of intelligence, applied knowledge and creativity.

Approximately 75% of the way through the 2017/2018 Session, 5043 bills/resolutions have been introduced, 61 of which pertain to assessment-related matters and at least 11 of which pertain to tax claim-related matters. Since the prior Update, there has been modest to significant movement on a number of bills. Following is a summary for your reading pleasure:

House Bill 1890/Senate Bill 950

This Act would create a Voluntary Real Estate Sales Verification Form Pilot Program with the goal of determining if the real estate sales validation process would be more accurate if a uniform Real Estate Sales Verification Form was used. The County Commissioners Association of Pennsylvania, along with the AAP, the State Tax Equalization Board (STEB) and the Local Government Commission (LGC) have developed the form, instructions for completion, and implementation guidelines. No fee can be charged to any person for any costs associated with the pilot program and the use of the forms in any assessment-related proceeding is prohibited. *First consideration in House Local Government Committee as of 6/6/2018 and second consideration in Senate Appropriations Committee as of 3/19/2018.*

House Bill 1990/Senate Bill 1007

This amendment would clarify what types of corrections may be made during an informal review of property value. It sets training requirements for members of Boards of Appeal and auxiliary boards who do not hold a CPE. It sets the conditions under which county commissioners may create auxiliary boards and states that auxiliary boards may not hear exemption appeals. It also allows for the creation of pools of qualified residents who may serve as auxiliary board of appeals members. *First consideration in House Local Government Committee as of 6/6/2018 and second consideration in Senate Appropriations Committee as of 4/25/2018.*

House Bill 1361/Senate Bill 689

This amendment would increase the size of the State Board of Certified Real Estate Appraisers from eight to ten. Six of the members would be certified real estate appraisers, two would be certified Pennsylvania evaluators and two would be public members. An appointee can be both a certified real estate appraiser and a certified Pennsylvania evaluator, but the appointment has to specify in which capacity they are being appointed. *Passed 192-0 in the House as of 6/22/2017 and second consideration in Senate Appropriations Committee as of 6/13/2018.*

House Bill 539/Senate Bill 384

This amendment would make the Assessors Certification Act apply to counties of the first class. Assessors employed by a county of the first class would have three years to become certified under the Act. *Passed 196-1 in the House on 4/4/2017, passed 49-0 in Senate on 4/25/2018 and referred to House Professional Licensure Committee for possible amendment as of 4/26/2018.*

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The *AAP Journal* is published four times a year.
Deadline for the Fall 2018 issue is September 7, 2018.

Article submissions are welcome.
Please send to:
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AAP Deputy Director

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AAP People & Chapter News

South Central Chapter

The chapter meets quarterly - March, June, September and December. Each meeting begins with the business meetings at 9 a.m., with seminars beginning immediately after the meeting (approximately 9:30 a.m.) and are held at the Adams County Agricultural and Natural Resources Center, 670 Old Harrisburg Road, Gettysburg, PA 17325. Please contact Barb Walter at (717) 337-9837 for more information.

South East Chapter

The chapter's meeting dates are June 27, September 26 and December 5. The chapter meets at Indian Valley Country Club. For more information, please contact Mark Jackowski, CPE, at (215) 348-6219 or *keyjazz5@hotmail.com*.

North East Chapter

The chapter's meeting dates are September 14, and December 7.

Armstrong County

Happy retirement to **Jeanne Englert** who retired from the county on April 6 after 22 years. Enjoy your retirement!

Clearfield County

Congratulations to **Melissa Fahr** for passing the CPE exam in May!

Crawford County

Congratulations to **Leslie Hollabaugh** for passing the CPE exam in April!

Franklin County

Welcome to **Pam Tasker** and **Stacy Beeler**, Franklin County's newest appraisers!

Lancaster County

Welcome to Lancaster County's newest appraiser, **Stevie Herr**.

York County

Congratulations to **Doug Sheaffer**, York County's newest CPE.

Send Your Chapter and County News!

Don't forget to send your county or chapter news for the next AAP Journal. Our next deadline is **September 7.**

Please send your news to Terry Cochran at *tcochran@pacounties.org*.



In Memory of Kendall 'Scott' Phillips

The AAP was saddened to learn of Scott Phillips' sudden and tragic passing on June 9.

Scott, served as president of the Laurel Mountain Chapter, was a member of the AAP Board of Governors, serving as his chapter representative, the editor of the *AAP Journal* and a member of the AAP Board of Appeals.

He is survived by his wife of 29 years, Vickie, his two children, Kamber and Russell and three grandchildren.

Memorial contributions and cards can be sent to the family at: Veronica Phillips
357 Elliotsville Road
Farmington, PA 15437

Scott's sense of humor and ready smile will be missed by everyone who knew him.

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Uniformity Requirements

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revenue increase to be gained by such an appeal. The school district argued that the constitutional requirement of Equal Protection is satisfied where a district is able to demonstrate a rational basis for their decisions of which property assessments to appeal.

The trial court agreed with the school district, sustained the Preliminary Objections and dismissed the taxpayers' case. In its opinion, the trial court held that appellants' claims regarding uniformity could be raised in the context of the individual assessment appeals still pending in the lower court. The trial court declined to exercise its equitable jurisdiction where, in the trial court's opinion, a substantial constitutional question was lacking.

The Commonwealth Court affirmed the trial court holding that the school district's selection of taxpayers' buildings for appeals did not violate the uniformity clause. The Commonwealth Court also held that the administrative exhaustion of remedies doctrine precluded taxpayers' separate equity action in that they could raise uniformity arguments in the context of the statutory assessment appeals. Commonwealth Court finally agreed with the trial court that the school district's consultant did not owe a duty to taxpayers and thus there was no cause of action against them. Keystone was subsequently dropped as a defendant in this action as taxpayers pursued their claims against the school district.

The Pennsylvania Supreme Court granted taxpayers' Petition for Allowance of Appeal. The order granting the Taxpayers the right to appeal frames the issues before the Court:
The issue as stated by Petitioners is: [The School District] deliberately chose commercial properties, such as Petitioners', 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 a school district's decision to appeal property assessment insulated from review because, inter alia, the school district has a statutory right to file appeals and can identify an economic reason for its appeals?"

Several school districts and the Pennsylvania School Boards Association filed *amicus curiae* briefs joining in the position of the school district and Keystone. Likewise, several amicus briefs were filed joining in the position of the appellants by the King of Prussia Mall, the Pennsylvania Chamber of Business and Industry, the Pennsylvania Food Merchants Association, the Pennsylvania Manufacturers' Association, the Pennsylvania Restaurant and Lodging Association, and the National Federation for Independent Business as well as the Pennsylvania Apartments Association. The Supreme Court heard argument on March 8, 2017 and issued a unanimous decision on July 5, 2017 reversing the Commonwealth Court and remanding the case for further proceedings.

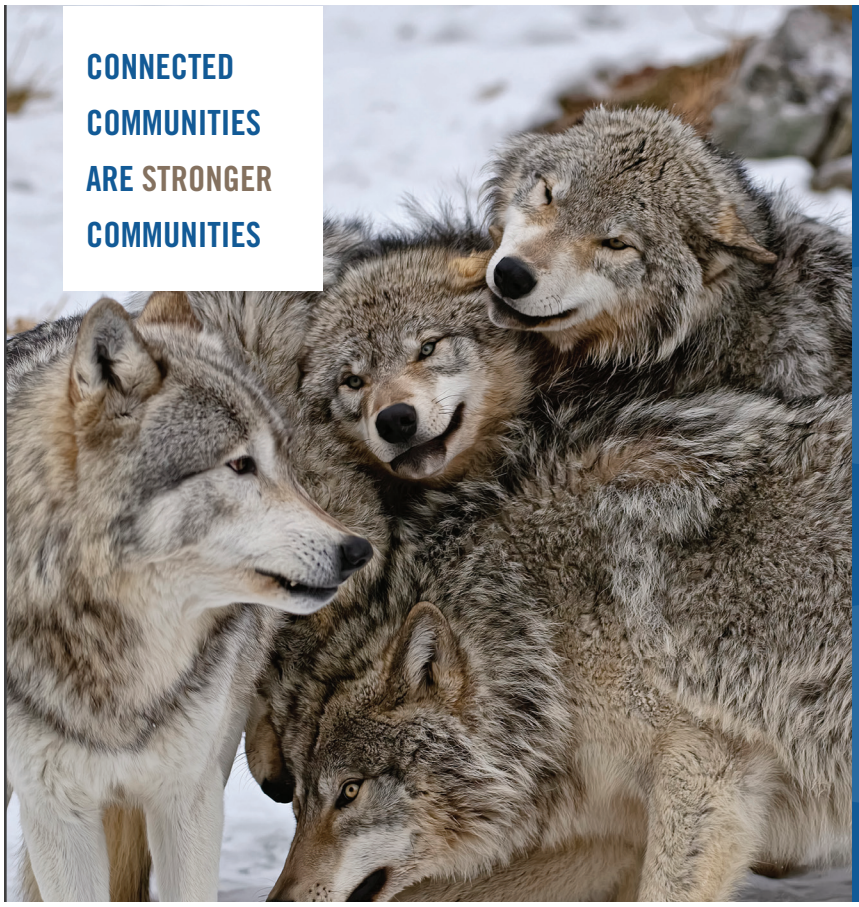
In its opinion, the Pennsylvania Supreme Court observed that the school district concentrated solely on appealing the assessments of commercial properties that included apartment complexes. The court found that the school district focused only on commercial properties because these properties' values were generally higher than those of single-family homes and raising their assessments would result in a greater tax-revenue increase than doing the same with the under-assessed single-family homes. Another factor alleged by the taxpayers as motivation for the district's decision of which properties to appeal was that most single-family residences are owned by school district residents who vote in local elections, and it would be "politically unpopular to appeal their assessments." This allegation was accepted as true by the Court in determining whether it was appropriate for the trial court to sustain the school districts' preliminary objections and dismiss the taxpayers' action.

The court unanimously held that taxing authorities are not permitted to divide the realty within their taxing district into multiple sub-classifications and either apply disparate assessment ratios to the different sub-classifications, or otherwise systematically treat them differently. The court stated that "where there is a conflict between maximizing revenue and ensuring that the taxing system is implemented in a non-discriminatory way, the Uniformity Clause requires that the latter goal be given primacy." *Supra at 980 (citing Clifton v. Allegheny County, 969 A.2d 1197 (Pa. 2009)).*

The opinion recites the history of uniformity challenges in Pennsylvania and distinguishes some of the reasoning set forth in the Commonwealth Court's decisions on uniformity from the Supreme Court's decision in *Downingtown Area School District v. Chester County Board of Assessment Appeals, 913 A.2d 194 (Pa. 2006)*. The court stated that traditionally a taxpayer was able to prove a lack of uniformity by presenting statistical analysis of the ratio of assessment to market values prevailing in the district. The measure of uniformity was often similar properties located in the subject property's neighborhood but it could also be a larger study that examined the entire district. This traditional approach was called into question by various Commonwealth Court decisions both before and after *Downingtown*. The Supreme Court's decision in *Valley Forge Towers* has made it abundantly clear that these traditional uniformity challenges are alive and well in Pennsylvania.

The court stated more than once their prohibition against any governmental strategy (that does not necessarily connote wrongful conduct) that involves disparate treatment of properties using property sub-classifications according to property type. They underscored the long-standing principle that all real estate is one class in Pennsylvania, entitled to uniform

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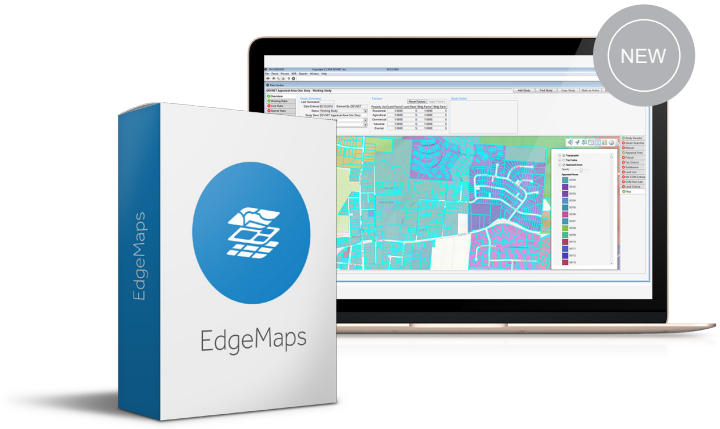
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Uniformity Requirements

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treatment. The court's opinion has left open the question of what appeal policies utilized by taxing districts would be found acceptable. It stated the "particular appeal policy employed by a taxing district lies within its discretion." The court stated that a monetary threshold – or some other selection criteria – may not violate uniformity as long as it is implemented without regard for the type of property or residency status of the property owner. The court was clear that such criteria were not before the court in this case. In a footnote, the court was careful to point out "[o]ur disapproval of Springfield's interpretation of this court's precedent should not be equated to disagreement with the result it reached." In *Springfield*, the property owners challenged a school district's policy of using of a monetary threshold to decide which properties to appeal.

In *Re: Appeal of Springfield School District, 101 A.3d 835 (Pa. Cmwlth. 2014)* they did not allege a scheme involving disparate treatment of property sub-classifications drawn according to property type or the status of its owner as a resident or non-resident of the taxing district.

There have been only a few common pleas decisions on uniformity challenges since the *Valley Forge Towers* decision was issued in July of 2017. It is important to note that the court in *Valley Forge Towers* went to great pains to say that the acceptable criteria for a taxing district's appeals were not before the Court in this case so they were not deciding that issue. The court has left open the question of what types of criteria will be found acceptable.

One question has been whether a taxing district may appeal properties based on their current value as indicated by a recent purchase. At least one common pleas court has answered this question, albeit in an unusual context, ruling that taxing districts may limit their appeals to mostly recently-sold properties without violating the Uniformity clause. There are other cases pending out of the City of Philadelphia challenging the Philadelphia School District's policy of filing assessment appeals and at least one common pleas court judge dismissed many appeals filed by the Philadelphia School District, ruling that they were filed in violation of the Uniformity clause. Many of these common pleas decisions have been appealed to the Commonwealth Court and are winding their way through the appellate process. We will have to wait for another day to find out the appellate courts' position on what criteria for making appeal determinations are constitutionally permissible.

Assessment Reform Task Force, Update

For the last eighteen months, CCAP and AAP have been working with the Local Government Commission's Assessment Reform Task Force and commission staff on projects and legislation to modernize, and increase the efficiency, transparency and fairness of the assessment process in Pennsylvania. To meet these goals, the Task Force produced both the **Model RFP and Contracting Guidelines For County Reassessment Services** and **The Self-Evaluation Guide**.

On May 23, 2018, the Local Government Commission voted unanimously to recommend the **Model RFP and Contracting Guidelines For County Reassessment Services** be adopted and implemented by CCAP.

Additionally, **The Self-Evaluation Guide** was reviewed by the Task Force on June 4th and approved by the Local Government Commission on June 13th.

Both of these documents have been shared with AAP chief assessors and board members and CCAP members in addition to being posted on both websites -- *pacounties.org* and *paassessors.org*.

AAP would like to thank the following people many of whom have served on more than one committee - Deb Crawford, JR Hardester, Josh Zeyn, Randy Waggoner, Barb Walter, Joan Righter Price, Larry Shubert, Steve Howe, Robbie Roland, Lynda Kyttle, Mark Kellerman, Angie Tennies, Deidre Hennon, Daryl Crum, Anthony Alu, Melissa Border, Danette Magee (Local Government Committee), Maryann Nardone, (Legislative Budget and Finance Committee) and Renee Reynolds (STEB/TED).

Many thanks for your hard work and for sharing your time and expertise.

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