

Real Estate Litigation

Assessors' Association of Pennsylvania
Annual Conference, Reading, PA

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Presenters

Sharon F. DiPaolo, CRE, Esquire



- Siegel Jennings, Co., L.P.A.
- Manage Pennsylvania law practice
- 25th year in assessment law
- Background before law school

Presenters

Christina Gongaware Noga, CPE



- Siegel Jennings, Co., L.P.A.
- Practice in all Pennsylvania counties
- Background before Siegel Jennings

ASSESSMENT APPEAL LITIGATION PROCESS

ASSESSMENT APPEAL LITIGATION

- Publication of each county's common level ratio July 1
- Appeals filed to Boards of Assessment – deadlines
- Nunc pro tunc appeals
- Submission of evidence to the Boards of Assessment
- Hearings before the Boards of Assessment
- Dispositions by the Boards of Assessment
- Appeal deadline to Court of Common Pleas

ASSESSMENT APPEAL LITIGATION

- Case arrives at Court of Common Pleas
- What happens next differs by County - examples
- Trials before the Courts of Common Pleas
- “De novo”
- Assessor’s role at trial
- Evidence
- Trial court’s decision
- Appeal deadline to the Commonwealth Court

ASSESSMENT APPEAL LITIGATION

- Appeals to Commonwealth Court are “as of right”
- Case arrives at the Commonwealth Court
- What happens next
- Mediation
- Briefing by both sides
- Oral argument
- Appellate court’s decision
- Appeal deadline to the Pennsylvania Supreme Court

ASSESSMENT APPEAL LITIGATION

- Appeals to PA Supreme Court are “discretionary”
- Petition for allowance of appeal and briefing
- Percentage of cases Supreme Court agrees to take
- What kinds of issues Supreme Court agrees to take
- Briefing on the merits by both sides
- Oral argument
- PA Supreme Court’s decision
- Appeal deadline to the United States Supreme Court

SELECTIVE REASSESSMENT AND UNIFORMITY

SELECTIVE REASSESSMENT & UNIFORMITY



SELECTIVE REASSESSMENT & UNIFORMITY

“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.”

Pennsylvania Constitution, Article VIII, Section 1

SELECTIVE REASSESSMENT & UNIFORMITY

GM Berkshire Hills LLC v. Berks County Board of Assessment, 290 A.3d 238 (Pa Supreme Court, February 28, 2023)

- Assessment appeal initiated by School District chasing recent sale price on apartment building
- Berks County last countywide reassessment 1994
- School “passed a resolution in 2018 to ***select certain property assessments*** in the district against which to lodge an appeal”

SELECTIVE REASSESSMENT & UNIFORMITY

GM Berkshire Hills LLC v. Berks County Board of Assessment

- Taxpayer challenged constitutionality of a school district's selection scheme for appeals (chasing sales), based on, inter alia, the United States Supreme Court's holding in Allegheny Pittsburgh Coal (US 1989).
- Allegheny Pittsburgh Coal holds that West Virginia Assessor could not reassess just recently-sold properties to their sale prices, while leaving other properties' assessments unchanged.

SELECTIVE REASSESSMENT & UNIFORMITY

GM Berkshire Hills LLC v. Berks County Board of Assessment, 290 A.3d 238 (Pa Supreme Court, February 28, 2023)

- Trial court ruled in favor of government
- Commonwealth Court ruled in favor of government
- Pennsylvania Supreme Court agreed to take the case

SELECTIVE REASSESSMENT & UNIFORMITY

GM Berkshire Hills LLC v. Berks County Board of Assessment, 290 A.3d 238 (Pa Supreme Court, February 28, 2023)

- September 15, 2022 Oral argument in Philadelphia
- October 1, 2022 Chief Justice Max Baer passes
- February 28, 2023 PA Supreme Court splits 3-3

SELECTIVE REASSESSMENT & UNIFORMITY

GM Berkshire Hills LLC v. Berks County Board of Assessment

Opinion in Support of Affirmance: Mundy, Wecht, Brobson

“There is nothing in our decisional law that prohibits this type of methodology, and *Valley Forge Towers* strongly suggested the Uniformity Clause would permit it. In this regard the School District's policy does not create a prohibited sub-class of properties defined by an impermissible characteristic such as type, use, neighborhood, or residency status of the owner; it tends to enhance uniformity by selecting for appeal the most nonuniform properties about which reliable information is readily available; and it represents an effort to use public funds responsibly.”

SELECTIVE REASSESSMENT & UNIFORMITY

GM Berkshire Hills LLC v. Berks County Board of Assessment

Opinion in Support of Reversal: Donahue, Todd, Dougherty

“Today, the Opinion in Support of Affirmance ("OISA") disregards the cornerstone of the Uniformity Clause by placing its imprimatur on a blatant subclassification of property for tax assessment appeal purposes. As a result, a citizen has no reason to feel that he is bearing his proportionate share of the tax burden measured by the value of his property to that of his neighbor, and the promise of the Uniformity Clause has been broken.”

SELECTIVE REASSESSMENT & UNIFORMITY

GM Berkshire Hills LLC v. Berks County Board of Assessment

Opinion in Support of Reversal: Justice Dougherty writing separately

“Also, to the extent the propriety of a school district's selection method of property assessment appeals under the Uniformity Clause continues to be an issue in future cases, **I write to suggest a legislative remedy** for what is, in my view, the underlying problem in many — if not most — matters challenging individual property reassessments, i.e., stagnant, artificially low overall property values in a taxing district resulting from infrequent, sometimes decades old, countywide property assessments.”

SELECTIVE REASSESSMENT & UNIFORMITY

- **GM Berkshire Hills LLC v. Berks County Board of Assessment**

Opinion in Support of Reversal: Justice Dougherty writing separately

- “Pennsylvania is ***one of only two states*** that does not have statutorily mandated reassessments on a fixed cycle. See Clifton, 969 A.2d at 1231.” (citing Judge Wettick’s 50-state survey – PA and DEL)
- However, Delaware’s highest court declared its base year system unconstitutional in May 2020. Delaware is underway on a every-five-year reassessment cycle.

SELECTIVE REASSESSMENT & UNIFORMITY

- **GM Berkshire Hills LLC v. Berks County Board of Assessment**

Opinion in Support of Reversal: Justice Dougherty writing separately

- In re Delaware Public Schools Litigation, 2020 Del. Ch. LEXIS 177, 239 A.3d 451 (Del. Ch. May 8, 2020)(Chancery Court of Delaware ruling all counties' base year assessment methodologies violate Delaware's Uniformity Clause)
- “[I]n my view, the legislature would do well to repeal its [the base year system’s] indefinite use, and enact an assessment period encompassing a sound interval of years.”

SELECTIVE REASSESSMENT & UNIFORMITY

- GM Berkshire Hills LLC v. Berks County Board of Assessment
- What are we seeing since the 3-3 Supreme Court decision?

SELECTIVE REASSESSMENT & UNIFORMITY

- **Duffield House Assocs. v. City of Philadelphia 260 A.3d 329 (Pa. Commw. Ct. July 29, 2021), pet. for appeal den., 279 A.3d 1185 (Pa. June 2022)**
- For tax year 2018, City reassessed 41,730 commercial properties at current market value
- For tax year 2019, the City did not reassess 538,380 residential parcels, leaving them at 2017 values
- 700 commercial taxpayers appealed

SELECTIVE REASSESSMENT & UNIFORMITY

- **Duffield House Assocs. v. City of Philadelphia 260 A.3d 329 (Pa. Commw. Ct. July 29, 2021), pet. for appeal den., 279 A.3d 1185 (Pa. June 2022)**
- City's selective reassessment in Tax Year 2018 of only commercial properties violated the Uniformity Clause of the Pennsylvania Constitution.
- City ordered to issue refunds

SELECTIVE REASSESSMENT & UNIFORMITY

- **Marchwood v. Chester County, 92 CD 2022 (Pa. Commw. Ct. October 6, 2023).**
- School District appealed apartment building to increase assessment.
- Taxpayer defended arguing School District's selection policy was unconstitutional 1) on its face and 2) as applied.
- School's policy – appeal any real property assessment that “may potentially result in total additional tax revenue of \$10,000 or more”
- No limit set in policy as to number of properties to be appealed.

SELECTIVE REASSESSMENT & UNIFORMITY

- **Marchwood v. Chester County, 92 CD 2022 (Pa. Commw. Ct. October 6, 2023).**
- School District hired appraisal firm to “identify up to 15 properties”
- Appraiser selected 15
- Then appraiser and solicitor added Marchwood Apartments for a total of 16
- One property rejected due to “very aggressive” attorney

SELECTIVE REASSESSMENT & UNIFORMITY

- **Marchwood v. Chester County, 92 CD 2022 (Pa. Commw. Ct. October 6, 2023).**
- Trial court and Commonwealth Court ruled for government
- PA Supreme Court granted the allowance of appeal.
- Case was briefed
- Oral argument was September 11, 2025
- Awaiting decision

FRAUD

FRAUD

- **Wolk v. Lower Merion School District, 228 A.3d 995 (Pa. Commw. Ct. 2020)**
- Class action against School District. Class is all taxpayers 2016-2021
- Since 2006, School District had increased taxes by 53.3%
- School tax rate capped at no more than 2.4% increase per year, with certain exceptions

FRAUD

- **Wolk v. Lower Merion School District, 228 A.3d 995 (Pa. Commw. Ct. 2020)**
- Each year for at least 7 years, the School District projected a deficit, which then allowed School District to apply for an exception to the Taxpayer Relief Act
- However, School District, in fact, had a \$42.Million surplus
- Taxpayers sought and won a preliminary injunction barring school district from implementing a 4.44% tax increase for 2016-2017, instead limiting increase to 2.4%
- Commonwealth Court affirmed the injunction

FRAUD

- **Wolk v. Lower Merion School District, 228 A.3d 995 (Pa. Commw. Ct. 2020)**
- Settled at trial court – six years of litigation, 2 times to the Commonwealth Court, pleadings were not yet closed, 2.5 days of mediation
- Worth reading Wolk v. Lower Merion School District, No. 2016-10838, Montgomery County, Pa – Complaint and Settlement
- Settlement: \$15 Million refund to taxpayers

FRAUD

Gioffre v. Allegheny County, GD 21-7154

- Maddie Gioffre
- “Newcomer tax”
- Allegheny County’s CLR

FRAUD



FRAUD

Downingtown School District v. Chester County, 913 A.2d 194
(Pa. Supreme Ct. 2006)

Assessments Law statute that essentially precluded a tax uniformity constitutional challenge to an assessment if the common level ratio (CLR) did not vary more than 15% from the established predetermined ratio (EPR) permitted taxing district to assess taxpayer's shopping center at 100% of actual value on an assessment appeal while assessing other shopping center owner at the CLR rate of 85.2% of actual value, and thus, statute was arbitrary and unconstitutional under the Uniformity Clause of the state Constitution. Const. Art. 8, § 1; 72 P.S. § 5349 (d.2).

FRAUD – Allegheny County's CLR

2013	100%
2014	100%
2015	90.8%
2016	92%
2017	87.1%
2018	87.4%
2019	87.5%
2020	86.2%
2021	87.5%

FRAUD – Allegheny County's CLR

2013	100%
2014	100%
2015	90.8%
2016	92%
2017	87.1%
2018	87.4%
2019	87.5%
2020	86.2%
2021	87.5%

S&D Shah Corporation, K-ROSE Properties, LLC and Sharon F. DiPaolo v. BPAAR, GD No. 15-13517

ORDER

AND NOW, this 3 day of September 2015, upon consideration of the Complaint in Mandamus, it is hereby ordered that the Allegheny County Board of Property Assessment Appeals and Review to apply the Common Level Ratio to its findings of fair market value where the appellant elects a current market value methodology.

the Board shall apply the Common Level Ratio regardless of whether it is sought by any party.

BY THE COURT:

this Order of Court also applies to proceedings before the Board of Viewers.

J.

Gioffre v. Allegheny County & BPAAR GD 21-007154

- **In calendar year 2020, 34,563 sales in Allegheny County**
- **Allegheny County coded only 5,355 as “valid”**
- **Allegheny County coded 85% of all sales as “invalid”**

Amended Complaint at para 21

Gioffre v. Allegheny County & BPAAR GD 21-007154

Excerpt from Gioffre's Amended Complaint dated ___, at para 7:

7. "The "Validation/Rejection Codes" that the County report to STEB for sales of property are incorrectly assigned to artificially increase, or overstate, or inflate, the CLR. This artificial increase in the CLR is caused (a) when the County assigns Rejection codes to valid sales that have a low property ratio of assessed value to sale price (like Sale 1 above), and (b) when the County assigns the "00" "Valid Sale" code to sales that do not qualify to be coded as a "00" "Valid Sale", that have a high property ratio of base year assessed value to sale price (like Sale 2 above). Again, both of these types of incorrect assignments of codes function to increase the CLR. Exhibit 1, page 7, is the list of the code numbers and the names given to the codes. Exhibit 2, pages 11, 12 and 13, has a detailed description of the codes.

Gioffre v. Allegheny County & BPAAR GD 21-007154

:

Allegheny County Real Estate Sales Data

<http://infoportal.alleghenycounty.us/resalesdata/home>

“Of interest is the portal code “UR” that means “unverified valid ratio within tolerance”. An analysis of the portal sales for 2020 reveals that this code, “UR” “unverified valid ratio within tolerance,” is applied to sales where the property ratio is between 90% and 120%, even if the sale is clearly not a “00” “Valid Sale” under STEB coding criteria.”

Amended Complaint at para 21 and 22.

Gioffre v. Allegheny County & BPAAR GD 21-007154

Excerpt from Gioffre's Motion to Compel Deposition Testimony filed 3-18-2022 at para. 1:

1. "At the deposition of Jim Davis, the Office of Property Assessments manager, he was directed not to answer questions on the topic of 2020 sales coding, and the process of making 2020 sales coding corrections, after he testified that the County filtered high ratio sales, above .9, into sales coded as valid to State Tax Equalization Board (STEB) for 2020. The use of a computer program to falsely code high ratio sales, as valid to the STEB, to cause an inflated common level ratio (CLR) to be calculated by STEB, is referenced in the Motion for Injunctive Relief."

Gioffre v. Allegheny County & BPAAR GD 21-007154

Timeline

- **June 2021 suit filed**
- **November 8, 2021 Court Order Overruling County's Pos**
- **March 9, 2022 Order setting evidentiary hearing for April 27, 2022**
- **April 1, 2022 City of Pittsburgh SD enters appearance (10 months after lawsuit filed and 26 days before trial)**
- **April 22, 2022 Pretrial statements filed by Plainiffs, County, City of Pittsburgh SD**
- **April 27, 2022 Evidentiary Hearing** __ > **Consent Order**

Gioffre v. Allegheny County & BPAAR GD 21-007154

Timeline

- **Re-do of all sales from 2020**
- **.September 1, 2022 County submits re-done data. Now over 10,000 sales**
 - County's Statements in Court
 - Math based on County's re-done data
 - Order setting 63.53

Gioffre v. Allegheny County & BPAAR GD 21-007154

November 14, 2022 Order, Judge Hertzberg:

“From this evidence, there can be no doubt that Allegheny County’s Office of Property Assessment had been ‘cooking the books’ on CLR data submitted to STEB.”

April 5, 2023 Argument at Commonwealth Court:

“Send it to STEB”

Gioffre v. DCED, STEB, No. 1100 CD 2021

- Gioffre “sister” case at Commonwealth Court
- April 25, 2023 Order by Commonwealth Court directing STEB to recalculate Allegheny County’s 2020 sales data for 2020 CLR “based up on the newly revised 2020 sales data provided by Allegheny County.”
- Next STEB meeting May 17, 2023
- At May 4, 2023 AAP conference “***We should have STEB CLR of 63.53 or thereabouts on May 18***”
- What happened?

Gioffre v. DCED, STEB, No. 1100 CD 2021

- On May 17, 2023 STEB issued revised CLR of 63.5%

Gioffre v. DCED, STEB, No. 1100 CD 2021

- What has happened since?

FRAUD?

- **Auditor General's Report January 25, 2023**
- Audit of sample of 12 school districts
- PA School Code and Taxpayer Relief Act (Act 1) dictate how schools can raise taxes and sets limits for those increases.
- If district must raise taxes above limits, they are required to 1) ask voters to approve in a referendum, or 2) apply to PDE for a referendum exception
- Audit was performed in response to concerns by taxpayers and the General Assembly regarding the practice of School districts raising property taxes without voter approval

FRAUD?

- **Auditor General's Report January 25, 2023**
- Taxpayer Relief Act of 2006 (Act 1) was intended to give voters a greater say when a school district needed to raise property taxes beyond limits set by the law
- Found questionable practices ... a “shell game”
- Districts accumulated millions of dollars for multiple years in the General Fund while giving the perception in their budgets that the district needed tax revenue to balance the budget
- “If this is standard operating procedure for these [12 districts], it’s not a stretch to say that its common practice across the state.

COMMON LAW RATIO AND UNIFORMITY

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COMMON LAW RATIO AND UNIFORMITY

- **Gianotti v. Lackawanna County Bd. of Assm't Appeals, Docket 21-CV-239 (Ct. Cmn. Pl. Dec. 15, 2021) (Judge Munley)(not appealed)**
- **Lewis v. Lackawanna County Bd. of Assm't Appeals, 20-CV-3457 (Ct. Cm. Pl. Dec. 15, 2021)(J. Munley)(not appealed)**
- Taxpayer presented evidence that its property was assessed at a higher assessment to market value ratio than its competitive set. Taxpayer prevailed. This is a trial court decision.

COMMON LAW RATIO AND UNIFORMITY

Lackawanna decisions cite In re Appeal of Brooks Building, 137 A.3d 273 (Pa. 1958)

- Historic Brooks Building, 15 S. Franklin Street, Wilkes-Barre, Luzerne County
- Taxpayer's attorney was Max Rosenn, Esquire who went on to become a Judge on the United States Third Circuit Court of Appeals
- Uniformity evidence – sales ratio of similarly situated commercial buildings

COMMON LAW RATIO AND UNIFORMITY

In re Appeal of Brooks Building, 137 A.3d 273 (Pa. 1958)

- “This Court holds that the right of the taxpayer whose property alone is taxed at 100 percent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of the statute.” (citing the ***United States Supreme Court*** in Cumberland Coal v. Board of Assmt Greene County, 284 U.S. 23 (1931)(arising out of Greene County, Pennsylvania))

COMMON LAW RATIO AND UNIFORMITY

In re Haven at Atwater Village LLC. Slip Copy (Pa. Commw. Ct. Jan. 14, 2022)(UNPUBLISHED)

- Chester County
- Apartment, stipulated to FMV and CLR
- Taxpayer evidence of ratio of 14 sales deemed to be insufficient
- Relevant, but insufficient
- Query: How does that conform to Brooks Building?

COMMON LAW RATIO AND UNIFORMITY

Downingtown Area School District v. Chester County (Marchwood), No. 2019-11727-AB (Chester County Tr. Ct. March 8, 2022), 303 A.2d 1104 (Pa. Commw. Ct. Oct. 6, 2023)

- Apartment complex, SD appeal, stipulated to FMV
- Issue: equal protection, discrimination
- 16 appeals, all commercial (1 residential appeal since 2012)
- Trial court ruled for school district
- Argued at Commonwealth Court March 7, 2023

COMMON LAW RATIO AND UNIFORMITY

Downingtown Area School District v. Chester County (Marchwood), No. 2019-11727-AB (Chester County Tr. Ct. March 8, 2022), 303 A.2d 1104 (Pa. Commw. Ct. Oct. 6, 2023)

- Commonwealth Court explained: School chose to appeal assessments of only 16 properties even though it knew there were many more properties that met the monetary threshold, and it had no standard methodology to identify properties
- “Rejected a particular commercial property solely because its counsel was aggressive”

COMMON LAW RATIO AND UNIFORMITY

Downingtown Area School District v. Chester County (Marchwood), No. 2019-11727-AB (Chester County Tr. Ct. March 8, 2022), 303 A.2d 1104 (Pa. Commw. Ct. Oct. 6, 2023)

- Commonwealth Court reversed, in favor of taxpayer
- " The School District's monetary formula based upon a \$10,000 increase in tax revenue may be facially neutral and may be constitutional, as suggested in Valley Forge, 163 A.3d 962. ***That remains to be determined.*** See Berkshire Hills II, 290 A.3d at 253 (Donohue, J., opinion in support of reversal). However, the School District's decision to undertake a piecemeal implementation of this policy, deliberately leaving many other underassessed properties alone, has created disparate treatment that is anathema to the Uniformity Clause.

RECENT CASES AND LEGISLATION

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- **Mon Valley Unemployed Committee, Inc. v. Commonwealth of PA, No. 261 MD 2025**

RECENT CASES AND LEGISLATION

- **House Bill 567 of 2025 Senator Fontana**
- <https://www.palegis.us/legislation/bills/2025/sb0567>

RECENT CASES AND LEGISLATION

- **Allegheny County Reassessment Litigation (City of Pittsburgh School District, Flavia Laun)**

RECENT CASES AND LEGISLATION

Allegheny County Proposed Ordinance for cyclical reassessment

RECENT CASES AND LEGISLATION

- **Upper Merion Area School District v. King of Prussia Associates, Montgomery County Board of Assessment Appeals, Upper Merion, Township, and Montgomery County**, No. 800 C.D. 2024 (Pa. Commonwealth Court, March 17, 2026)
- **Petition for Allowance of Appeal to PA Supreme Court**, Filed by Upper Merion Area School District, Appellant, Document No: 215 MAL 2026 (Pa. Supreme Court, April 17, 2026)

RECENT CASES AND LEGISLATION

What cases do you have that you want to discuss?

GOOD PROCEDURES AND PRACTICES

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GOOD PROCEDURES AND PRACTICES

Tyler v. Hennepin County, 598 U.S. 631 (2023) United States Supreme Court)

- 94-year-old widowed grandmother in Minneapolis
- Condominium seized for failure to pay property taxes
- Minnesota is one of 20 states that take the sale of proceeds without sharing with profit with prior owner when sold

GOOD PROCEDURES AND PRACTICES

Tyler v. Hennepin County, 598 U.S. 631 (2023) United States Supreme Court)

- Lived in condo until age 81, moved to senior living
- Failed to pay property taxes for 5 years, owed \$15,000
- County (Minnesota) sold at public auction for \$40,000
- County kept the \$25,000 surplus
- Taking without just compensation? Unconstitutional?

GOOD PROCEDURES AND PRACTICES

Tyler v. Hennepin County, 598 U.S. 631 (2023) United States Supreme Court)

- Property owner sued the county arguing the \$25,000 surplus home equity value was property the county took from her, in violation of 5th (Takings Clause) and 8th amendments (Excessive Fines Clause)
- Trial court dismissed, ruling for government.
- United States Court of Appeals for 8th Circuit affirmed, ruling for the government

GOOD PROCEDURES AND PRACTICES

Tyler v. Hennepin County, 598 U.S. 631 (2023) United States Supreme Court)

- Property owner appealed to United States Supreme Court which on January 13, 2023 agreed to hear the case
- Decision handed down May 25, 2023 written by Chief Justice Roberts, unanimously ruled for property owner
- Principle that government cannot take more from a taxpayer than she owes

QUESTIONS?



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THANK YOU!