IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT

BRETT MANDEL**,** et al.	**:**	
	:	January Term, 2011
Plaintiffs	**:**	No. 3848
	:	
v.	**:**	
	:	
THE CITY OF PHILADELPHIA	**:**	
Defendant.	**:**	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S PRELIMINARY OBJECTIONS TO PLAINTIFFS' AMENDED COMPLAINT

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INTRODUCTION

Plaintiffs, eighteen individuals who own property within the City of Philadelphia, allege a lack of uniformity in the assessment of real estate within the City and, though they have no standing to do so, seek millions of dollars in economic relief, unprecedented notice to non-Plaintiffs, a stay of enforcement of the City's and School District's tax liens until such unprecedented notice is provided, and far-reaching equitable relief.

The relief sought is audacious in its scope. According to Plaintiffs, this Court should stop the City from determining the rate of tax on real estate within its boundaries, should force the City to refund millions of dollars from its 2011 and 2012 property taxes, should require the City to give notice to all overassessed taxpayers whose properties are subject to tax liens, and should prevent the City from enforcing against any such taxpayer until the City provides such notice.

Plaintiffs also seem to desire a Plaintiff-designed and Court-controlled real estate tax assessment system for the City of Philadelphia. Indeed, Plaintiffs' first allegation in their Amended Complaint (which is attached hereto as Exhibit A) requests "the assistance of the Court in order to adopt and implement a real property assessment system for the City of Philadelphia." Amended Complaint, ¶ 1. There is no basis or precedent for any of these categories of extraordinary relief sought by Plaintiffs.

Before discussing the specific preliminary objections to the Amended Complaint, some background is appropriate. The Philadelphia tax base has no equal in the Commonwealth in terms of size, diversity and complexity. The City

has more than 500,000 parcels of real estate that must be assessed, in some form, on a property by property basis. The tax base includes commercial, non-profit, industrial and residential structures of every size, shape and character. There are more than 50,000 vacant and abandoned properties alone.

As the courts have frequently recognized, the valuation of real estate is not a push of the button process.[1] Each of these different types of property has its own individual valuation characteristics and complexities that must be examined, catalogued, understood and considered in light of what has been -- particularly in the last several years -- a rapidly changing real estate market. In a City with the complexity and variety of properties and structures that exist in Philadelphia -- some dating from the 1700s, others subdivided or built in the last few years -- it cannot be surprising that differences in valuation exist.

The City does not contend that its tax assessment system is perfect. But perfection is not the standard. See, e.g., Beattie v. Allegheny Cnty., 589 Pa. 113, 130-31, 907 A.2d 519, 529-30 (2006) ("[A]lthough the complaint alleged that there was a systemic under-valuation in the high-end properties and the opposite effect for low-end parcels, 'taxation is not an exact science,' and hence, 'perfect uniformity or absolute equality is not required.'") (citation omitted). In fact, the

[1] See, e.g., Beattie v. Allegheny Cnty., 589 Pa. 113, 134, 907 A.2d 519, 532 (2006) (Cappy, J., concurring) ("Determining whether a property assessment was properly done is beyond cavil a fact-intensive inquiry, one in which the agency's expertise would be most welcome. The fact that this matter raises a macro, county-wide challenge does not render agency involvement unnecessary; if anything, specialized administrative knowledge could prove even more helpful in such a complex matter.").

imperfection of every real estate system in the state has long been recognized by our Supreme Court as an inescapable reality. See, e.g., Commonwealth v. Del. Div. Canal Co., 123 Pa. 594, 620-22, 16 A. 584, 588-89 (1889) ("Absolute equality is of course unobtainable; a mere approximate equality is all that can reasonably be expected.").

For more than several decades, the Philadelphia Board of Revision of Taxes ("BRT") was responsible for the assessment of real property in Philadelphia. Plaintiffs' Amended Complaint surveys that history and then weaves a distorted story purportedly supported by old statistics and studies. But Plaintiffs are not challenging assessments as they existed in the past; their Amended Complaint challenges assessments for 2011.

Despite that fact, the Amended Complaint largely ignores that in the last two years the City has been engaged in a highly visible and historic effort to improve and modernize the City's real estate assessment system, candidly acknowledging the issues of the past and cleaving a definitive separation from the policies and procedures of the now largely-dismantled Board of Revision of Taxes. The improvements are not a simple act accomplished by the stroke of a pen; rather they involve a comprehensive re-engineering of the entire assessment system. That re-engineering has required fundamental changes in the role and governance of the BRT, as well as the work flows, qualifications and duties of property evaluators, and the process by which certain assessment employees are hired, trained and perform their jobs.

To that end, the City temporarily took over the entire assessment function of the BRT in 2009, and a ballot question to make that change permanent was placed on the ballot in May of 2010. After the members of the BRT sought to block the citizens of Philadelphia from voting on that question, the Supreme Court granted a writ under its extraordinary jurisdiction and then held that the City had the power to remove the assessment function from the Board. Bd. of Revision of Taxes v. City of Philadelphia, 4 A.3d 610 (Pa. 2010).

After the electorate voted -- overwhelmingly -- to move the assessment function from the BRT, the City created a new office, the Office of Property Assessment (the "OPA"), to do just that, effective October 1, 2010. In the eight months since that time, the OPA has undertaken a number of important steps to improve the assessment process, including major changes in the hiring, training, retention and payroll practices of the staff. Just as one example, the City integrated a category of employees -- Real Property Assistants employed by the School District -- into the City civil service ranks, requiring all such individuals to pass proficiency examinations in order to transfer over to the City payroll and remain in positions at OPA.

No one would suggest that the OPA's work on the assessment system has been completed, but Plaintiffs' efforts -- to use a grab bag of historical facts and statistics regarding assessments performed by the old BRT to provide a basis for the far-reaching relief Plaintiffs request in 2011 with respect to the assessments now being managed by the newly minted OPA -- are inappropriate. The financial relief sought would impair the City, and the School District, and there is no basis in

law or equity supporting a court ever taking such action. While such extraordinary requests may make for nice sound bites,[2] they are plainly unauthorized and must be dismissed.

While we reserve the right to challenge the Plaintiffs' requests for equitable relief at another time, we must note now that this case is not a simple challenge to the timing of assessments like many of the cases upon which Plaintiffs rely. See, e.g., Clifton v. Allegheny Cnty., 600 Pa. 662, 969 A.2d 1197 (2009) (considering a challenge to whether the county may refuse to conduct a reassessment annually in favor of administering a base year system), cited in Plaintiffs' Amended Complaint at ¶ 104. Plaintiffs' challenge is to the assessment system as a whole.

But Pennsylvania's Constitution and statutes afford broad, discretionary authority to Philadelphia and the rest of Pennsylvania's 67 counties over how to assess and tax real estate within their respective boundaries. The law leaves to the discretion of Philadelphia's public officials hundreds of separate but inter-connected decisions regarding the best way to assess properties in Philadelphia. The equitable relief Plaintiffs ultimately appear to want through a judgment in this case would inevitably require the Court to become the administrator of the assessment system. While Plaintiffs might like the Court to become mired in the

[2] For example, in a recent radio podcast, Plaintiff Mandel, a once and possibly future candidate who is again apparently raising money to run for political office, see http://www.brettmandel.com/content/make-donation, calls this relief a "hammer" to be brought down on the City, see http://www.newsworks.org/index.php/homepage-feature/item/15615-ben-vs-brett-is-nutter-secretly-planning-for-a-future-tax-increase&Itemid=1 (last accessed March 23, 2011).

micro-managing of hundreds of discretionary decisions of City officials, this is no place for a court to be. As our Supreme Court aptly put it in Beattie:

> The relief plaintiffs seek -- an order requiring [the county] to utilize that data which it has collected, supplement this data as necessary, and reassess plaintiffs' properties as required for the purpose of tax collection -- asks this court to assume responsibility for the operation of the assessment system until the deviations between assessed values and fair market values for all groups of property are similar.
>
> This is not an appropriate role for the court. Case law holds that the appeals process must be pursued where the county is operating a viable assessment system; courts should become involved in the county's operation of its assessment system only as a last resort.

Beattie, 589 Pa. at 118, 907 A.2d at 522 (quoting and affirming the trial court's opinion).

With these principles in mind, we turn to the specific preliminary objections at issue here.

SUMMARY OF ARGUMENT

Plaintiffs seek to invoke the Court's equity jurisdiction to hear their allegations that the City has failed to correct supposedly unequal results from the City's application of its real estate assessment system, allegedly leading to the entire City now having a real estate assessment system that is non-uniform to an unconstitutional degree.

They pursue three counts: (1) a claim under state assessment statutes, namely the First Class County Assessment Law, 72 P.S. §§ 5341.1-5341.21, and the General County Assessment Law, 72 P.S. §§ 5020-1 to 5020-602, which purportedly require the City, among other things, to equalize property values

within the City to achieve uniformity; (2) a claim under the Equal Protection Clause of the Pennsylvania Constitution, which provides that "[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right," Pa. Const. art. I, § 26; and (3) a claim under the Uniformity Clause of the Pennsylvania Constitution (Count I), which provides that "[all] taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax," Pa. Const. art. VIII, § 1. Plaintiffs claim that the City's assessment system is unconstitutionally non-uniform in that similarly situated properties are taxed at different rates. They seek economic, declaratory, injunctive and mandamus relief.

Plaintiffs assert that, as a result of these violations, the Court should, among other things: (1) declare that the City's tax assessment system violates these provisions, Amended Complaint, Prayer for Relief (a); (2) order the City to make certain discovery documents available that would supposedly allow Plaintiffs to establish their allegations of non-uniformity, Amended Complaint, Prayer for Relief (f); (3) order the City to develop procedures to ensure that any tax increases, including the City's 2011-2012 real estate tax increase, do not worsen any existing non-uniformity; and order the City to determine the amounts by which overassessed properties were disproportionately penalized by the tax increase and to set aside such amounts as a reserve for possible future economic claims for all overassessed taxpayers, Amended Complaint, Prayer for Relief (g), (h); and (4) order the City to review all properties subject to tax liens to determine whether any

of the liens are attributable to overassessment and, if so, notify the taxpayer; and prohibit the City from imposing any new liens, or enforcing any existing liens, on overassessed properties until the City has conducted such review and notice, Amended Complaint, Prayer for Relief (i) and (j).

The threshold flaw with Plaintiffs' Amended Complaint is that Plaintiffs fail to establish standing. Specifically, several Plaintiffs fail to allege that their particular properties were overassessed, and, even as to those Plaintiffs who allege overassessment, they fail to plead facts to support their conclusory allegation of such overassessment.

Separately, Plaintiffs' entire Amended Complaint also fails because, to the extent Plaintiffs allege any deficiencies with the tax system, these purported deficiencies apply to prior tax years, not the current system. Thus, all three counts of the Amended Complaint should be dismissed.

In the alternative, we ask the Court to significantly narrow this case, and immediately dismiss the following: Plaintiffs' claims for economic damages allegedly attributable to the 2011-2012 tax increase, both on behalf of other taxpayers and on behalf of Plaintiffs themselves; Plaintiffs' notification claim -- that the City identify all properties with tax liens that arise from overassessments, notify the owners, and refrain from enforcement until providing such notice; and Plaintiffs' claims for discovery documents.

We ask the Court to allow the parties to focus instead on the real issue of fixing the tax assessment system, without debilitating the City's budget in the interim. Indeed, the City is well on its way to improving assessment policies and

procedures, having completely revamped the anachronistic organization responsible for assessments, without any court involvement.

To the extent that Plaintiffs seek *economic relief*, such as refunds, on behalf of all overassessed taxpayers, they cannot do so, either with respect to other taxpayers, or with respect to themselves. Regarding Plaintiffs' economic claims on behalf of other taxpayers, Plaintiffs have not filed a class action, and have provided no basis for their unprecedented request that the City give economic relief to non-Plaintiffs.

Moreover, even as to these individual Plaintiffs, the Court should dismiss their request for economic relief from the 2011-2012 tax increase, because this request merely constitutes a challenge to each Plaintiff's individual tax assessment (in that Plaintiffs seek economic relief based upon flawed assessments). The exclusive jurisdictional method for challenging tax assessments is to file an appeal to the BRT pursuant to the statutory appeal mechanism, not to pursue a claim in this Court in the guise of an equity action. The BRT is fully adequate to hear Plaintiffs' individual assessment appeals. In any event, such an equity action could have potentially devastating consequences to the City and the School District.

Regarding Plaintiffs' *notification* claim -- that the City identify all properties with tax liens that arise from overassessments, notify the owners, and refrain from enforcement until the City provides such notice -- Plaintiffs' claim fails because, again, Plaintiffs cannot seek relief on behalf of non-Plaintiffs. Moreover, Plaintiffs lack standing to pursue this claim in particular (in addition to their overall lack of

standing) because none of the eighteen Plaintiffs alleges that his property is subject to a tax lien arising from an overassessment.

Finally, the Court should strike Plaintiffs' *document discovery* claim, because Plaintiffs' document-production request is a discovery request, not a substantive Prayer for Relief request found in a Complaint.[3]

MATTERS BEFORE THE COURT

The matters before the Court are the City's Preliminary Objections seeking dismissal of all three counts of Plaintiffs' Amended Complaint for lack of standing and for failure to allege deficiencies with the current system, or, in the alternative, seeking (1) the dismissal of Plaintiffs' claims for economic relief; (2) the dismissal of Plaintiffs' notification claims; and (3) the dismissal of Plaintiffs' document discovery claims.

STATEMENT OF QUESTIONS INVOLVED

1. Whether Plaintiffs, who fail to allege with sufficient specificity that they are overassessed, and therefore aggrieved, by the current tax system, have standing to state a uniformity challenge.

Suggested answer: no.

[3] By not specifically challenging every particular allegation or prayer for relief in Plaintiffs' lengthy Amended Complaint (e.g., Plaintiffs' prayers for mandamus relief), the City by no means concedes that any such allegations or prayers for relief are legally sufficient or have merit. In any event, the entire Amended Complaint should be dismissed for lack of standing, and for failure to allege deficiencies with the current system.

2. Whether Plaintiffs can assert a claim for economic relief from the 2011-2012 tax increase on behalf of all taxpayers, when they are not authorized to assert claims on behalf of other taxpayers, and when, with regard to their own claims, the exclusive jurisdictional method for challenging tax claims is to file an appeal pursuant to the statutory appeal mechanism.

Suggested answer: no.

3. Whether Plaintiffs can pursue their notification claim -- i.e., that the City must identify all properties with tax liens that arise from overassessments, must notify the owners, and must refrain from enforcement until the City provides such notice -- when Plaintiffs cannot seek notice on behalf of non-Plaintiffs, and when, in any event, Plaintiffs lack standing to pursue this claim in particular because none of the eighteen Plaintiffs alleges that his property is subject to a tax lien arising from an overassessment.

Suggested answer: no

4. Whether Plaintiffs can assert a document discovery claim, when Plaintiffs' document-production request is a discovery request, not a substantive Prayer for Relief request properly found in a Complaint.

Suggested answer: no.

I. Allegations of the Amended Complaint

Plaintiffs complain that properties of essentially equal value are assessed (and, therefore, taxed) at different rates relative to each other, leading to certain

properties being overassessed while other properties are correspondingly underassessed, allegedly in violation of state assessment laws, namely the First Class County Assessment Law, 72 P.S. §§ 5341.1-5341.21, the General County Assessment Law, 72 P.S. §§ 5020-1 to 5020-602, the Pennsylvania Equal Protection Clause, and the Uniformity Clause.

Although the only relevant question for purposes of such a uniformity challenge is whether the City is currently in violation of the law, Plaintiffs' 43-page Amended Complaint nonetheless weaves a decades-long history of alleged deficiencies in the City's real estate assessment system, starting with purported non-uniformity in the early 1980s, Amended Complaint ¶¶ 46-47, and going forward. Oddly, they make few, if any, present-day allegations, although their request is entirely dependent upon proof of present-day non-uniformity.

Throughout this entire decades-long time period, the City of Philadelphia Board of Revision of Taxes (BRT) was responsible for performing the City's assessments. Amended Complaint ¶ 25. By way of background, the former constitution of the BRT actually had two different functions: the making of assessments of real property for the City, and the handling of any appeals from those assessments (including claims that the assessments were non-uniform). See 72 P.S. §§ 5341.7, 5341.8, 5341.11, 5341.14.

Plaintiffs allege that the assessment "problems of the BRT [were] unfortunately legendary," Amended Complaint ¶ 38, as described in the extensive press coverage regarding these problems, Amended Complaint ¶ 36, leading to the

conclusion that the BRT's assessment system was "broken," Amended Complaint ¶ 3.

As a result, the City began its efforts to cure any problems associated with the BRT's assessments. In January 2010, the City, while continuing to aggressively fix the BRT's assessment system, imposed a moratorium on property re-assessments, Amended Complaint ¶ 37, in order to avoid aggravating any already existing problems with the BRT's system. Then the City, pursuant to an ordinance effective October 1, 2010, abolished the BRT as the assessing agency, and took over control of the BRT's assessment functions by creating the City's own Office of Property Assessment (OPA), Amended Complaint ¶ 27, which is the office now charged with making assessments in Philadelphia, including resolving any non-uniformities, and which, after only eight months in existence, has already taken several significant steps toward equalizing assessments in Philadelphia and is taking more.[4]

Thus, the City is actively fixing any problems associated with the BRT's allegedly broken assessment system. Indeed, as Plaintiffs themselves concede in their Amended Complaint, the City is in the process of "finish[ing] the job." Amended Complaint, ¶ 53. But Plaintiffs have now brought this lawsuit, asking the Court to compel the City to do essentially what it is already aggressively doing, and draining resources from doing just that. Plaintiffs filed a Complaint on

[4] Pursuant to Supreme Court mandate, the BRT continues to handle appeals from the OPA's assessments. Bd. of Revision of Taxes v. Philadelphia, 4 A.3d 610 (Pa. 2010).

January 28, 2011, and, after the City filed Preliminary Objections, filed an Amended Complaint on May 5, 2011.

II. The Terminology Used To Evaluate Uniformity

As noted, Plaintiffs complain that properties of essentially equal value are assessed (and, therefore, taxed) at different rates relative to each other. As an example, looking at Exhibit B to Plaintiffs' Amended Complaint, see Amended Complaint ¶ 129, which purports to provide market values and assessments of certain semi-detached twin masonry homes in the City, there are two allegedly similarly situated properties in the Exhibit that sold for the same amount -- 2025 Eastburn Avenue sold for $45,000 and 6722 Torresdale Avenue sold for $45,000. The assessed values of these homes differed, with the former being assigned a BRT market value of $20,200 (for a total 2011 City and School District tax liability of $587), and the latter being assigned a BRT market value of $49,400 (for a total 2011 City and School District tax liability of $1,435). Plaintiffs' theory is that the assessment at such different values of two properties that each sold for $45,000 constitutes a uniformity violation.

Plaintiffs use similar examples, and also then urge a statistical extrapolation from such examples across the City, to claim that the entire system is non-uniform. To assist the Court in evaluating Plaintiffs' allegations, we explain some of the statistical measures that Plaintiffs employ to try to plead systemwide non-uniformity; in particular, coefficient of dispersion (COD) and common level ratio (CLR).

A. COD

Plaintiffs rely heavily upon a statistical measure called the coefficient of dispersion. The Pennsylvania Supreme Court has explained COD as follows:

> The COD is the average deviation from the median, mean, or weighted mean ratio of assessed value to fair market value, expressed as a percentage of that figure. A high coefficient of dispersion indicates a high degree of variance with respect to the assessment ratios under consideration. A low coefficient of dispersion indicates a low degree of variance. In other words, a low coefficient of dispersion indicates that the parcels under consideration are being assessed at close to an equal rate. Referencing expert testimony, the trial court offered the following example: "[A] COD of 30 in a county with 100,000 parcels of taxable property means that the assessed values of approximately one-half of the properties in the county (i.e., 50,000 properties) either exceed the [ratio in the taxing district as a whole] by 30% or are less than 30% of the [ratio in the taxing district as a whole]. In other words, close to 25,000 of the properties will be assessed at no more than 70% of the common level ratio while another 25,000 of the properties will be assessed at 130% or more of the common level ratio."

Clifton v. Allegheny County, 600 Pa. 662, 694, 969 A.2d 1197, 1216 (2009).

According to Plaintiffs' Amended Complaint, an acceptable COD should be no higher than the 15-20% range, Amended Complaint ¶ 102.[5]

[5] A widely accepted statistical indicator of uniformity is the price-related differential (PRD), which reports the inequity between high-value and low-value properties. "PRDs above 1.03 tend to indicate assessment regressivity (an appraisal bias in which high-value properties are appraised lower than low-value properties relative to their actual value), while PRDs below 0.98 indicate tax progressivity (an appraisal bias in which high-value properties are appraised higher than low-value properties relative to their actual value)." Clifton, 600 Pa. at 694, 969 A.2d at 1216-1217.

B. CLR

The Pennsylvania Supreme Court has described the Common Level Ratio as follows: "The CLR is the ratio of assessed value to current market value used generally in the county." Clifton, 600 Pa. at 692, 969 A.2d 1197 at 1215 (citing 72 P.S. §§ 4656.16a, 5020-102, 5342.1). Thus, the CLR, if calculated properly, is a valuable gauge of whether an individual taxpayer's home is underassessed or overassessed relative to the community as a whole.[6]

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[6] There is another standard, called the established predetermined ratio (or EPR). The EPR is set by a county and is the ratio of assessed value to market value that must be uniformly applied by a county in determining assessed value in a given year. 72 P.S. §§ 5020-102, 5342.1. Unlike CLR, however, which is updated every year, "the EPR is treated as a fixed number that merely fractionalizes assessments and which is generally held constant pending county-wide reassessment." Clifton, 600 Pa. at 691, 969 A.2d at 1214.

When a county calculates its assessments for individual properties, it multiplies the market value by its own county-wide EPR. For example, in Philadelphia, the EPR is 32%, and thus the assessment for all properties in Philadelphia is calculated by multiplying the assigned market value by 32%. By statutory mandate, however, the CLR instead of the EPR "must be used to calculate the assessed value on appeal when the EPR varies from the CLR by more than 15%; in all other cases, the statute mandates application of the EPR to the current market value." Smith v. Carbon Cnty. Bd. of Assessment Appeals, 10 A.3d 393, 399 (Pa. Commw. 2010). If an individual's assessed-to-market value ratio on appeal varies by more than 15% from CLR, the BRT should apply CLR to market value; if an individual's assessed-to-market value ratio on appeal varies by less than 15% from CLR, the BRT should apply EPR to market value. But see Downingtown Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals, 590 Pa. 459, 475, 913 A.2d 194, 204-205 (2006) (holding that allowing even 15% range was unconstitutional in context of statutory appeals by taxing district).

EPR is also sometimes called PDR, or predetermined ratio. Clifton v. Allegheny Cnty., Nos. GD05-028638, GD05-028355, 2007 Pa. Dist. & Cnty. LEXIS 202, at *46 n.21 (Allegheny County June 6, 2007), aff'd in part and remanded in part, 600 Pa. 662, 969 A.2d 1197 (2009). PDR should not be confused with the very conceptually distinct PRD, referenced in the preceding footnote.

The CLR is calculated by the State Tax Equalization Board ("STEB"), which calculates a CLR for each county by using data from arms' length sales transactions in the county during the relevant period, see 61 Pa. Code § 603.1, supplemented by independent appraisal data and other relevant information, see, e.g., 61 Pa. Code § 603.31, and then creating a ratio of the assessed value to market value for the entire community. STEB also calculates a COD and PRD.[7]

Thus, using the $45,000 homes as an example, and assuming that the two homes represent the entire taxing district, the CLR, or the ratio of assessed value to market value, for that "district" would be .773 -- calculated as follows: ($20,200 + $49,400)/($45,000 + $45,000) -- with an average assessed value of $34,800, and an average market value of $45,000.[8] The home assessed at $20,200 (with an assessment-to-market value ratio of .449) would be assessed at less than the common level for the district, and would therefore be underassessed; the home assessed at $49,400 (with a ratio of 1.12) would be assessed at greater than the common level for the district, and would therefore be overassessed.

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[7] Although we accept, as we must, their accuracy and validity for purposes of these preliminary objections, we ultimately question the use of both COD and PRD as measuring devices, and we question the accuracy of Plaintiffs' proffered COD's and PRD's, including the COD's and PRD's produced by STEB.

[8] In Philadelphia, the assessed values would actually be 32% of market value. See supra note 6. For ease of understanding, however, in our hypothetical district we assume an EPR of 100%, so that assessed value and market value are identical to one another.

III. The Tax Increase

On May 10, 2010, attempting to deal with the local consequences of the national economic meltdown, Mayor Nutter signed into law an ordinance authorizing a 9.9% increase in real estate taxes for 2011 and 2012. Amended Complaint ¶ 42.

By way of background, real estate taxation in Philadelphia works as follows. Pursuant to the First Class County Assessment Law, Philadelphia property owners' tax assessments are finalized no later than ten days before the first Monday in October. 72 P.S. § 5341.10(a). The individual assessments are calculated by multiplying a property's market value by the established predetermined ratio (EPR) set by the City (32%), which results in an assessed value. Owners have until the first Monday in October to challenge their assessments, by filing an appeal with the BRT, 72 P.S. § 5341.14(a). The assessments become binding and conclusive for property owners who fail to appeal by the first Monday in October, and after that date, owners can no longer challenge their assessments. Lincoln Phila. Realty Assocs. I v. Bd. of Revision of Taxes, 563 Pa. 189, 211, 758 A.2d 1178, 1190 (2000).

In December, the property owners in Philadelphia receive their tax bill, which is calculated by multiplying the assessed value by the tax rate (sometimes referred to as the "millage rate"). Pursuant to the new ordinance, codified at Philadelphia Code § 19-1301, the 2011 and 2012 tax bills reflect a 9.9% increase in tax rate. (Relevant sections of The Philadelphia Code are attached hereto as Exhibit B).

The money from the tax bills goes to the City and the School District of Philadelphia. See Amended Complaint ¶ 22. To be precise, there are actually two different taxes: one is levied by the City (pursuant to City Council Ordinance, Philadelphia Code § 19-1301 (which is authorized by 53 P.S. § 15971)); and one is levied by the School District (pursuant to City Council Ordinance, Philadelphia Code § 19-1801 (which is authorized by 53 P.S. § 16101), and pursuant to acts of the General Assembly, 24 P.S. §§ 583.1, 583.6, 583.10, 583.14, 6-652). Both sets of taxes are calculated by multiplying the tax rate by the assessments. The School District receives slightly more than half of the revenues.

The tax bills are due by March 31 of each calendar year, but property owners who pay their bills early, by February 28, receive a discount on their taxes. For property owners who pay after March 31, additions to taxes are imposed. Philadelphia Code § 19-1303. The City imposes a lien on any property for any delinquent tax bills relating to a particular year's assessments if the tax is not paid by January of the following year. 53 P.S. §§ 17045, 17046.

The tax rate, including the 9.9% increase, was lawfully enacted pursuant to the City's well-established statutory authority to impose real estate taxes for itself. See 53 P.S. § 15971. Plaintiffs here seek a refund of the 9.9% increase for all overassessed taxpayers in 2011-2012, not just the taxpayers who are Plaintiffs herein.

The Court should dismiss Plaintiffs' Amended Complaint, or, in the alternative, several of the individual claims for relief.

ARGUMENT

I. Preliminary Objection Numbers 1, 2, and 3: The Court Should Dismiss Plaintiffs' Amended Complaint For Lack Of Standing

As noted above, Plaintiffs complain that properties of essentially equal value are assessed at different rates relative to each other. Plaintiffs attempt to plead non-uniformity by alleging a high COD. However, because a correctly calculated COD only represents a statistical measure of the alleged variance in assessment ratios across the City as a whole, it is insufficient to confer standing upon any individual Plaintiff.

To establish standing, an individual Plaintiff must allege both that he is individually overassessed relative to the district as a whole, and must plead with sufficient specificity how his particular property has been overassessed.

Using the $45,000 home example, it is helpful to recall that there were two homeowners: (1) the $45,000 homeowner whose property was overassessed at $49,400 (who, thus, might have been aggrieved by non-uniformity), and (2) the $45,000 homeowner whose property was underassessed at $20,200 (who, thus, benefited from the non-uniformity).

Only the former could have standing, and his complaint would be required to allege both that he was overassessed relative to the district (which he was), and the specifics of such overassessment -- in particular, the market value of his or her property ($45,000), the assessed value of that property ($49,400), and the assessment of that property that Plaintiffs allege should have been made using the current, properly calculated City-wide CLR ($34,800).

Because no individual Plaintiff in this case pleads with sufficient specificity both the fact of overassessment relative to the district, and the specifics of such overassessment, Plaintiffs' Amended Complaint should be dismissed for lack of standing.

We recognize that, for purposes of the Amended Complaint, there are two categories of Plaintiffs -- those who alleged that they were overassessed relative to the district, and those who failed to even put forth the conclusory assertion that they were overassessed relative to the district. Specifically, ten of the eighteen Plaintiffs alleged that they were overassessed relative to the district. Amended Complaint ¶ 80 (Plaintiffs Lisa Parsley, Sharyn Solomon, Darlene Chester, Janis Barksdale, Karen Jackson, Shaun Smith, Isaiah Zagar, Julia Zagar, Richard Snyderman, and Ruth Snyderman). The other eight -- including first named Plaintiff Mandel, plus Grace D'Agostino, Joanne Bursich, Christina Bradley, Janis Moore Campbell, Iyad Obeid, Jodi Obeid, and Valentino Rudi -- did not so allege.

As we now explain, the entire Amended Complaint (of all eighteen Plaintiffs) must nonetheless be dismissed because no individual Plaintiff pled the specifics of his overassessment, even if he alleged the legal conclusion that he was overassessed. In the alternative, at least eight Plaintiffs should be dismissed for the additional reason that they failed to even allege the legal conclusion.

A. The Court Should Dismiss All Three Counts Of Plaintiffs' Amended Complaint Because Plaintiffs Fail To Allege With Sufficient Specificity The Details Of Any Overassessment

The Court should dismiss Plaintiffs' Amended Complaint because they fail to allege the facts of any overassessment -- namely the market value, the assessed

value, and the proposed assessed value that Plaintiffs allege should have been assigned.

Specifically, Plaintiffs (even the ten Plaintiffs who allege that they were overassessed relative to the district) lack standing because they at best only pled a legal conclusion and fail to provide any specificity whatsoever as to the nature of the alleged overassessment. See Clearview Land Development Co. v. Kassab, 24 Pa. Commw. 532, 535, 357 A.2d 732, 733 (1976) (granting preliminary objections because plaintiff only alleged legal conclusions but not facts).

To allege injury from non-uniformity, each Plaintiff must plead the market value of his or her property, the assessed value of that property, and, at the very least, the assessment of that property that Plaintiffs allege should have been made using the current, properly calculated City-wide CLR. See, e.g., Smith v. Carbon Cnty. Bd. of Assessment Appeals, 10 A.3d 393, 406 (Pa. Commw. 2010) ("the CLR . . . is . . . the standard against which the taxpayer's assessment ratio should be measured for uniformity purposes").

Because no Plaintiff alleged even such basic details, the Amended Complaint should be dismissed. It is worth noting that Plaintiffs were oddly willing to plead greater specificity with respect to several non-Plaintiffs. For example, Plaintiffs noted that "a two-story twin home in Kingsessing that sold in 2009 for $27,000 pays almost 50% more in taxes than a two-story twin home in Mill Creek that sold in 2010 for $129,000." Amended Complaint, ¶ 129. Although even this allegation is insufficient, in that it does not allege the assessment that should have been applied to these properties, this allegation comes

closer to the required specificity. Regarding Plaintiffs' properties, however, we know nothing except their addresses. In particular, we do not know how Plaintiffs contend that they are aggrieved by the system they challenge. Accordingly, Plaintiffs' Amended Complaint should be dismissed.

The procedural background also supports this dismissal. In Plaintiffs' initial complaint, none of the eighteen Plaintiffs alleged even that they were overassessed at all relative to the district, let alone the facts to support any such conclusion. In our Preliminary Objections to the initial Complaint, we explained that the Complaint should be dismissed because none of the eighteen Plaintiffs alleged that he was overassessed relative to the district.

We specifically noted that "Plaintiffs cannot acquire standing by merely amending the Complaint to add the phrase 'overassessed relative to the district.' That would be nothing more than a bald legal conclusion, and not supported by any alleged facts." Memorandum of Law in Support of Preliminary Objections to Plaintiffs' Complaint, at 29. We explained that "general averments of matters that are mere legal conclusions from facts not stated are insufficient and are not acceptable unless supported by a statement of facts." 3 Stand. Pa. Prac. 3d § 16:70.

Yet, that is exactly what ten of the eighteen Plaintiffs have done here, notwithstanding clear law. Two different conclusions flow from this procedural history. First, it shows (as discussed further next) that the eight Plaintiffs who did not plead even the conclusory allegation that they were overassessed relative to the district -- including first named Plaintiff Mandel -- necessarily lack standing,

because they still have not even alleged that they were overassessed. Second, even as to the ten Plaintiffs who alleged that they were overassessed relative to the district, they still lack standing because they only pled a legal conclusion.

B. Alternatively, The Court Should At Least Dismiss The Eight Plaintiffs Who Failed To Allege That They Were Overassessed Relative To The District

Eight Plaintiffs failed to even plead the basic conclusion that they were overassessed relative to the district, and they should be dismissed for lack of standing for this straightforward and additional reason.

The eight Plaintiffs might offer two responses to this argument. First, they might suggest that it does not matter whether they are overassessed or underassessed, because even underassessed individuals have standing to challenge systemwide tax discrimination. Second, even if Plaintiffs are generally underassessed, they are overassessed relative to certain subsets (such as vacant properties), and, therefore, they still have standing. Both arguments fail.

1. Only Overassessed Plaintiffs Have Standing To Sue Under The Uniformity Clause

"Our Commonwealth's standing doctrine is not a senseless restriction on the utilization of judicial resources; rather, it is a prudential, judicially-created tool meant to winnow out those matters in which the litigants have no direct interest in pursuing the matter. Such a requirement is critical because only when 'parties have sufficient interest in a matter [is it] ensure[d] that there is a legitimate controversy before the court.'" In re Hickson, 573 Pa. 127, 135-36, 821 A.2d 1238, 1243 (2003). To have standing, a person must be an "aggrieved" party. Id.

In particular, "it is not sufficient for the person claiming to be aggrieved to assert the common interest of all citizens in procuring obedience to the law." Id. Furthermore, an individual lacks standing to assert the rights of others. Mifflin Cnty. Sch. Dist. v. Monsell, 95 Pa. Commw. 173, 177, 504 A.2d 1357, 1359 (1986) (dismissing suit because "[a]ppellee's dispute with the Board is based solely on an abstract philosophical difference"). On the contrary, to be "aggrieved," a person must have a "substantial, direct, and immediate interest" in the subject matter of the litigation. Hickson, 573 Pa. at 136, 821 A.2d at 1243.

By failing to allege that they were overassessed, the eight Plaintiffs have failed to establish that they are aggrieved for standing purposes; at most, they have stated only an abstract interest in having the City uniformly assess taxes. If anything, any Plaintiffs who were underassessed, far from being aggrieved by the alleged non-uniformity, instead benefit from it. As one court succinctly stated, in holding that underassessed taxpayers lacked standing to assert a uniformity challenge:

> Obviously a large contingent of the plaintiff class and subclasses -- all taxpayers assessed at or below the [ratio of the sum of the assessments of all real estate in the relevant jurisdiction to the sum of the fair market values of the same real estate] -- have not suffered the requisite injury. Indeed, those class members directly benefit from defendants' claimed misconduct -- assessment nonuniformity and inadequate remedies -- because their low assessments translate into correspondingly low tax burdens.

Coleman v. McLaren, 98 F.R.D. 638, 643-44 (N.D. Ill. 1983).

A plaintiff who suffers no "substantial, direct, and immediate" harm from the alleged violation of law (and, a fortiori, a plaintiff who benefits from the alleged violation), merely presents the same interest as all other citizens in seeing the law enforced. Such plaintiffs are not aggrieved and lack standing.

Therefore, the Court should dismiss the eight Plaintiffs for lack of standing.

2. A Plaintiff Must Allege That He Is Overassessed Relative To The Taxing District As A Whole, And Not Merely Relative To Certain Hand-Picked Subclassifications

The eight Plaintiffs may argue that -- even if they themselves are underassessed and, thus, benefit from the assessments that they challenge -- there are other taxpayers who are even more underassessed than they are and, thus, are even more tax-favored than Plaintiffs themselves. Put differently, they allege that, although there are 578,000 properties in the City, Amended Complaint ¶ 22, they have standing because they are overassessed relative to "hundreds" of those properties, Amended Complaint ¶ 44, even if underassessed relative to the remaining hundreds of thousands of properties.

This failure to provide Plaintiffs the maximum available benefit from the alleged non-uniformity is insufficient to confer standing upon Plaintiffs. Plaintiffs claim that they are overassessed relative to vacant properties -- allegedly the most underassessed of all property types, Amended Complaint ¶¶ 88-89 -- and that commercial property owners are overassessed relative to residential property owners, Amended Complaint ¶¶ 88-89. Therefore, according to Plaintiffs, they can state a claim even if they are underassessed on the whole.

But, the Commonwealth Court recently held that Plaintiffs do not have standing to assert a challenge with respect to even the highly underassessed subsets, because Plaintiffs must prove that they are overassessed relative to the taxing district as a whole, and not just certain hand-picked subsets. Smith v. Carbon Cnty. Bd. of Assessment Appeals, 10 A.3d 393 (Pa. Commw. 2010).

It is well established that, "[i]n determining whether a lack of uniformity exists, the taxpayer's assessment ratio must be compared to the 'common level' of assessed to market value existing in the taxing district," and not to Plaintiffs' own hand-picked subset. Smith, 10 A.3d at 402. In Smith, a taxpayer, an owner of a condominium in a development where most of the units were materially identical, challenged the Board's property assessment of $88,141.00, which was calculated by multiplying the county's CLR of 32.1% times the property's market value of $275,000. In challenging this calculation, the taxpayer offered evidence that several materially identical properties, despite having market values that were virtually identical to his property's market value of approximately $275,000, actually were assessed at approximately $50,000, or well below the $88,141.00 assessment upon his property. Id. at 398.

The taxpayer did not challenge the calculation of his market value, did not challenge the CLR, and did not argue that his property was assessed higher relative to market value than was typical or average in the district. Instead, the taxpayer argued that his property should have been assessed lower than otherwise called for by the CLR, because similarly situated properties in his condominium community were assessed at an even lower rate than the CLR. The Commonwealth Court

rejected this argument that the taxpayer's assessment should be reduced to reflect the assessment ratio of the neighborhood subclass; instead the proper level for assessment was the CLR for the entire district. The Court explained:

> [T]he taxpayer [is] not entitled to have his assessment reduced to the lowest ratio of assessed value to market value to which he could point if such ratio did not reflect the common level prevailing in the district overall. Rather, precedent establishes that a taxpayer [is] entitled to have his property assessed at a rate that represents the common level in the district.

Smith, 10 A.3d at 403 (emphasis in original); see also Appeal of F.W. Woolworth Co., 426 Pa. 583, 587, 235 A.2d 793, 795 (1967) ("Since uniformity has as its heart the equalization of the ratio among all properties in the district, a determination based upon the district as a whole necessarily is more conducive to achieving a constitutional result than one based upon a few properties") (emphasis in original).

The Smith Court did acknowledge that neighborhood or subclass assessment ratios were relevant toward demonstrating a lack of overall uniformity. Smith, 10 A.3d at 402-404 (citing Deitch v. Bd. of Property Assessment Appeals, 417 Pa. 213, 209 A.2d 397 (1965); Downingtown Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals, 590 Pa. 459, 913 A.2d 194 (2006)). But such neighborhood or subclass assessment ratios, without further proof that the taxpayer was overassessed relative to the entire taxing district, were legally insufficient to establish unconstitutional non-uniformity: "[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." Smith, 10

A.3d at 407 (holding that assessment at the CLR, and not lower, was proper even though taxpayer "demonstrated that his property was assessed at a greater percentage of market value than some other similar properties in his development").[9]

Similarly, Plaintiffs' allegation here -- that they were overassessed relative to certain types of properties, like vacant properties -- is legally insufficient to establish unconstitutional non-uniformity. Plaintiffs who benefit from the system that they challenge cannot manufacture standing by alleging that others benefit even more than they do. Instead, Plaintiffs must allege that they were overassessed relative to the entire district, through the CLR. Because the eight Plaintiffs fail to do so, the Court should dismiss their Amended Complaint for lack of standing.

II. Preliminary Objection Number 4: The Court Should Dismiss Plaintiffs' Amended Complaint Because Plaintiffs Fail To Allege Deficiencies With The Current System

Plaintiffs' Amended Complaint challenges their present-day tax assessments and the present state of the City's system. Yet, although the Amended Complaint contains numerous citations to media reports and historical statistics, it is noticeably devoid of any specificity regarding the state of the City's real estate tax system in 2011. For example, Plaintiffs cite numerous statistics regarding the state

[9] Our point is not to defend the specific STEB-calculated Philadelphia CLR itself, but instead to point out that the common level ratio concept marks the standard for establishing aggrievement for standing purposes. Put differently, as Smith clearly holds, the relevant standard for measuring aggrievement for uniformity purposes is the average for the taxing district as a whole (whether measured by STEB's CLR, or some other way), and not a hand-picked, highly underassessed, subset.

of the City's system in 2003 and 2008, see, e.g., Amended Complaint ¶ 107 (2003 COD), ¶ 109 (2003 PRD), ¶ 116 (2008 COD), ¶ 117 (2008 COD and PRD), and even these allegations concern data compiled several years earlier, e.g., Amended Complaint ¶ 115 (the 2008 COD reflected data from 2006 and 2007).

But Plaintiffs' data from several years ago are insufficient as a matter of law to prove non-uniformity. See Tenoco Oil Co. v. Department of Consumer Affairs, 876 F.2d 1013, 1024 (1st Cir. 1989) ("[Instead of using data from 1981], one would have expected the agency to be able to support such an essential figure by specific economic data . . . for the year in question, 1986."). This is particularly true given that, over the intervening years from the mid-2000's to the present, (1) the real estate market has dropped, precipitously and historically, (2) such a drop in the real estate market tends to improve uniformity, see Smith v. Carbon Cnty. Bd. of Assessment Appeals, 10 A.3d 393, 405 n.17 (Pa. Commw. 2010), and (3) the City has specifically dismantled the assessment function of the BRT and replaced it with the OPA. In short, the use of pre-recession, pre-OPA, data simply cannot prove Plaintiffs' case. Therefore, without more updated allegations, Plaintiffs' Amended Complaint cannot stand.

When it comes to alleging that the City's current COD evidences an unconstitutional degree of non-uniformity, Plaintiffs only vaguely conclude that "the COD and PRD for the City as a whole are currently outside of the ranges permitted . . . by the law in Pennsylvania," Amended Complaint ¶ 102, and that "significant variations in effective property tax rates among various sub-classifications of real property persist today," Amended Complaint ¶ 127, with no

data to back up their conclusory allegations. Such legal conclusions are insufficient. See Beattie, 589 Pa. at 130, 907 A.2d at 530 (dismissing county-wide challenge where numerous statistics were cited in complaint, but plaintiffs did not demonstrate non-uniformity in the "present operation" of the county's system).

Plaintiffs' Amended Complaint tells a long yet highly excerpted story of the alleged history of Philadelphia's real estate tax system. If Plaintiffs were to prove every single factual averment in their Amended Complaint, at best they might then be able to demonstrate that the City's tax system administered by the BRT, historically, pre-recession, was broken. But such proof would still be devoid of facts showing that the system currently administered by the OPA is non-uniform.

III. Preliminary Objection Numbers 5, 6, 7, 8, and 9: This Court Should Dismiss Plaintiffs' Request For Economic Relief From The 2011-2012 Tax Increase

In Plaintiffs' Amended Complaint, as in their Initial Complaint, Plaintiffs challenge the City's 2011-2012 tax increase. Specifically, Plaintiffs now ask the Court to order "the City to develop and implement procedures to ensure that any real property tax increase, including but not limited to the 9.9 percent tax increase for 2011-2012, does not worsen existing non-uniformity within the City's real estate taxation scheme." Amended Complaint, Prayer for Relief (g).

Also, relatedly and more specifically, they ask the Court to order "the City to determine, as of the effective date of the 2011-2012 Tax Increase, and continuing thereafter until constitutional uniformity has been achieved in the property assessment scheme, the amounts by which overassessed properties are disproportionately penalized by the 2011-2012 Tax Increase, and any subsequent

tax increases, and setting aside such amounts as a reserve for future claims by the affected taxpayers." Amended Complaint, Prayer for Relief (h).

Plaintiffs appear to seek this relief on behalf of both themselves, as well as all other overassessed taxpayers. As we now explain, the Court should strike these requests (a) with respect to non-Plaintiff overassessed taxpayers, because Plaintiffs cannot seek relief on behalf of other taxpayers, and (b) with respect to Plaintiffs themselves, because these prayers constitute requests for economic damages allegedly attributable to the 9.9% 2011-2012 tax increase (and such a request is actually a challenge to assessments -- in that Plaintiffs' claim to the economic relief is based upon their argument that the underlying assessments were not uniform -- over which the BRT has exclusive jurisdiction).

By way of background, in their initial Complaint, Plaintiffs asked the Court to prohibit the City from spending any extra revenues attributable to the 2011-2012 tax increase, and to return such revenues. Initial Complaint, Prayer for Relief (h) and (i). We filed Preliminary Objections to this request, contending that such a request amounted to a request for economic relief stemming from the tax increase, and that the Court should dismiss this request because, among other reasons, Plaintiffs were required to pursue such requests with the BRT.

Plaintiffs apparently agreed with us, because they do not specifically ask for the "return" of extra revenues attributable to the tax increase. Instead, they have recast their request, now asking the Court to order the City to develop procedures to ensure that the tax increase does not worsen existing non-uniformity (Prayer for Relief (g)), and asking the Court to require the City to determine the amounts by

which the tax increase disproportionately penalized overassessed taxpayers, and to "set aside" such amounts for the benefit of overassessed taxpayers (Prayer for Relief (h)).

However, Plaintiffs appear to be asking for the same thing as in their initial Complaint -- a request for economic damages allegedly attributable to the tax increase. Although Plaintiffs do not use the word "refund" or "return," Plaintiffs now ask for procedures to ensure that the tax increase does not worsen existing non-uniformity, and for a "set aside."

We cannot imagine how a "set aside" is materially different than a refund or economic relief, or how the City could develop procedures that would ensure that a tax increase does not worsen non-uniformity besides an economic rollback of the tax increase. Initially, we disagree with the premise that a tax increase worsens non-uniformity. Indeed, using any traditional statistical measure of uniformity (such as PRD or COD), a tax increase does not affect uniformity. To the extent a tax increase "worsen[s]" the effect of non-uniformity at all, it does so -- not through impacting any statistical measures of uniformity liability -- but simply by increasing overassessed individuals' economic damages, through operation of mathematics. Therefore, the only way to reverse such an effect is to rollback the increase mathematically through economic relief. Thus, Plaintiffs are requesting economic damages allegedly attributable to the tax increase, and this request should be stricken.

To the extent Plaintiffs are asking the Court for something besides economic relief, Plaintiffs' request should be dismissed for a separate reason -- it is unduly

vague. Put differently, assuming Plaintiffs do not ask for economic relief, we do not understand Plaintiffs' requested order and, therefore, we cannot be expected to comply with such an order. Accordingly, if Plaintiffs are not seeking economic relief, their request must be dismissed.

But we now assume herein that Plaintiffs are asking for economic damages allegedly attributable to the 2011-2012 tax increase. This request should also be stricken. We recognize that the extent of the request for economic relief may be smaller in this Amended Complaint than in the original Complaint. In particular, Plaintiffs now appear to ask for a refund of only a portion of the 2011-2012 tax increase revenues (corresponding only to the amount that overassessed taxpayers were "disproportionately penalized" by the 2011-2012 tax increase), Amended Complaint, Prayer for Relief (h), whereas the initial Complaint requested a refund of the entire 2011-2012 tax increase, Initial Complaint, Prayer for Relief (h). But this difference in degree of relief does not impact our argument, which is that any request for economic relief premised upon allegedly flawed assessments, whether that request is partial or total, must be presented initially through an assessment challenge to the BRT.

We first explain why the Court should strike Plaintiffs' requests with respect to non-Plaintiff overassessed taxpayers, and we then explain why the Court should strike the requests with respect to the individual Plaintiffs themselves.

A. Preliminary Objection Number 5: To The Extent That Plaintiffs Are Seeking Relief On Behalf Of Other Taxpayers, The Court Should Dismiss This Impermissibly Broad Request

Although Plaintiffs do not pursue a class action with its accompanying procedural protections, Plaintiffs appear to seek economic relief on behalf of all overassessed taxpayers, asking the Court to require the City to develop procedures to ensure that the tax increase does not worsen non-uniformity for all overassessed taxpayers, Amended Complaint, Prayer for Relief (g), and to require the City to determine, and then set aside, certain amounts for all overassessed taxpayers. Plaintiffs cite no authority that gives Plaintiffs permission to bring a lawsuit on behalf of non-Plaintiffs, and we are aware of none.

To the extent that the eighteen Plaintiffs are seeking some type of class-like relief on behalf of all other taxpayers, the Court must dismiss the request. It is well established that the right to seek refunds in the tax arena inures only to the individual, and cannot be transferred to others, including by way of a class action.[10] Plaintiffs cannot sidestep this procedural bar to their claims by seeking class-wide relief in a non-class action.

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[10] Zarwin v. Montgomery Cnty., 842 A.2d 1018, 1024 (Pa. Commw. 2004) ("[T]he Legislature has seen fit to give only the aggrieved individual the right to sue for a refund. The right is personal and may not be transferred to another by way of class action."); Israelit v. Montgomery Cnty., 703 A.2d 722, 725 (Pa. Commw. 1997) ("the statutory right to seek a refund belongs solely to an aggrieved individual and that right may not be transferred to others through a class action."); Stranahan v. Cnty. of Mercer, 697 A.2d 1049, 1053 (Pa. Commw. 1997) ("The right to obtain a refund belongs only to the aggrieved individual"); Aronson v. Pittsburgh, 98 Pa. Commw. 1, 6, 510 A.2d 871, 873 (1986) ("The statute is clear that the Legislature has seen fit to give only the individual aggrieved the right to

(continued...)

B. Preliminary Objection Numbers 6, 7, 8, and 9: The Court Should Dismiss Plaintiffs' Claims For A Refund Of The 2011-2012 Tax Increase Because The Only Jurisdictionally Valid Method For Seeking Tax Refunds For Overassessments Is To Pursue A Claim Under Pennsylvania's Statutory Scheme

As noted, Plaintiffs seek economic damages allegedly attributable to the 2011-2012 tax increase for all overassessed taxpayers. The Court should reject Plaintiffs' request for economic relief premised upon allegedly flawed assessments because the only jurisdictionally valid method for seeking such relief is to pursue a claim under Pennsylvania's exclusive administrative scheme.

Plaintiffs claim that "large and illegal disparities in property tax liability exist throughout the City," Amended Complaint ¶ 130, that the 2011-2012 tax increase made the assessment disparities worse by increasing the amount of the tax, Amended Complaint ¶ 45, and that the Court should therefore order at least partial refunds of the 9.9% tax increase for 2011 and 2012 for those overassessed taxpayers.

As described above, an individual's real estate tax liability is computed by multiplying two numbers: the assessed value and the tax rate. The tax rate, including the 9.9 percent increase, was lawfully enacted pursuant to the City's well-established statutory authority to impose real estate taxes, 53 P.S. § 15971, and Plaintiffs cannot, and do not, challenge the tax increase standing alone. The

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(continued...)

sue for a refund. The right is personal and may not be transferred to another by way of a class action.").

City indisputably has the right to impose real estate taxes, and also has the right to raise the rate in the face of dire economic situations.

Thus, City Council's lawful enactment of a tax rate (and corresponding increase) must be distinguished from the BRT's purportedly unconstitutional real estate assessments. It is the assessments, and not the tax increase, that Plaintiffs claim are unlawful.[11] Put differently, as a matter of simple mathematics, the tax increase can have no effect on the legal ratios that determine any alleged non-uniformities. And if any improper lack of uniformity in assessments were fully resolved, the purported tax-increase problem about which Plaintiffs complain -- that already existing non-uniformities in taxes are "exacerbated" by the enactment of a tax increase, Amended Complaint, ¶ 45 -- would necessarily be simultaneously resolved as a mathematical matter. Thus, Plaintiffs have no basis for objecting to the tax increase itself, standing alone from their challenge to the assessments.

The clear implication of Plaintiffs' Amended Complaint is that, because there allegedly are uniformity flaws with the assessments, the government should be allowed to continue to collect taxes at the rate in place on an arbitrary date Plaintiffs select, but should be prohibited from ever raising taxes. But there is no

[11] Plaintiffs Mandel, et al., may have a political dispute regarding the magnitude of the tax rate, but Plaintiffs cannot use this judicial forum or this assessment challenge to bootstrap their dissatisfaction with the tax rate into a legal claim for relief.

basis in law, fact, or logic for such a draconian and arbitrary request.[12] For this reason alone, the Court should dismiss Plaintiffs' claims for a tax-increase "set aside" or refund. This case, if it can be made at all, is no more than an assessment challenge.

Moreover, the exclusive remedy for a taxpayer's overassessment claim -- where, as here, the taxpayer seeks economic relief stemming from allegedly non-uniform assessments -- is to file an appeal with the BRT challenging the overassessment and establishing the fact of overassessment and the amount of overassessment,[13] and then, if successful, to seek a refund of the taxes paid through administrative processes.

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[12] In fact, as noted above, Plaintiffs seek economic relief with respect to both the 2011-2012 tax increase, and "any subsequent tax increases." Amended Complaint, Prayer for Relief (h). Putting aside the lack of ripeness of Plaintiffs' request regarding future tax increases, Plaintiffs' unprecedented request -- seeking to prohibit the government from exercising its discretion to change tax rates -- should be rejected because of its impact upon critical government decisionmaking. For example, on June 16, 2011, in response to the School District's well publicized and severe budget problems, City Council reported out of committee a real estate tax increase of approximately 4 percent designed to mitigate these problems. See Bill No. 110477, http://legislation.phila.gov/detailreport/?key=11416. According to Plaintiffs, the City should be prohibited from making this choice to benefit the schools.

[13] A taxpayer whose property is assessed at only a small amount greater than called for by the CLR, if entitled to any reduction in assessment at all, is only entitled to a much smaller reduction than a taxpayer whose property is assessed substantially higher than called for by the CLR. As this Court is well aware, the BRT is regularly called upon to handle assessment calculations of this nature.

We first explain that Plaintiffs must pursue their assessment appeals with the BRT; we then explain that the Court has no equity jurisdiction over these appeals, even though Plaintiffs assert a systemwide challenge; finally, we explain that Plaintiffs' due process challenge to BRT's appeal procedures also fails and does not render those procedures inadequate.

1. Plaintiffs Must Pursue Their Appeals With The BRT

The Pennsylvania Supreme Court has long held that equity has no jurisdiction where the complaint is overassessment. In Dougherty v. Philadelphia, 314 Pa. 298, 301, 171 A. 583, 584 (1934), for example, the Court explained: "Equity has jurisdiction to restrain attempted taxation for a total want of power to tax. But, where the power to tax appears, and the complaint is overassessment, . . . the remedy is by appeal to the common pleas from the action of the board of revision." See also Rochester & Pittsburgh Coal Co. v. Bd. of Assessment & Revision of Taxes of Indiana Cnty., 438 Pa. 506, 266 A.2d 78 (1970) (same).

In particular, the determination of which avenue a plaintiff must use to challenge an issue is a question of legislative intent, and the legislature retains the power to channel all issues, including constitutional ones, into a specified route of appeal, such as an administrative appeal before a state or local agency. Borough of Green Tree v. Bd. of Prop. Assessments, Appeals & Review, 459 Pa. 268, 277, 328 A.2d 819, 823 (1974) (plurality opinion). "If the legislature provides a specific[,] exclusive, constitutionally adequate method for the disposition of a particular kind of dispute, no action may be brought in any 'side' of the Common Pleas to adjudicate the dispute by any kind of 'common law' form of action other than the

exclusive statutory method." Dunn v. Allegheny Cnty., 877 A.2d 504, 512 (Pa. Commw. 2005) (emphasis in original).

The policy rationale for such channeling is well established: "The premature interruption of the administrative process restricts the agency's opportunity to develop an adequate factual record, limits the agency in the exercise of its expertise and impedes the development of a cohesive body of law in that area." Jordan v. Fayette Cnty. Bd. of Assessment Appeals, 782 A.2d 642, 646 (Pa. Commw. 2001).

Here, the General Assembly has determined that a taxpayer must challenge any alleged overassessment of his property through the state statutory scheme. Specifically, pursuant to the First Class County Assessment Law, the taxpayer must contest the assessments by filing an appeal with the BRT: "any person aggrieved by any assessment as the same shall be fixed following revision of assessments by the board, may file an appeal therefrom with the board." 72 P.S. § 5341.14(a). A taxpayer can then pursue a *de novo* appeal with the trial court. Lincoln Phila. Realty Assocs. I v. Bd. of Revision of Taxes, 563 Pa. 189, 205, 758 A.2d 1178, 1187 (2000).

Should the taxpayer's property be reassessed, the taxpayer must then seek a refund by means of a refund petition filed with the Department of Revenue, a denial of which is appealable to the Tax Review Board. See Philadelphia Code § 19-1703(1)(d) (petition for refund "shall be filed with the Department [of Revenue] within 3 years from the date of payment"); id. § 19-1703(7) ("Any decision of the Department denying a refund in whole or in part may be appealed

to the Tax Review Board by the petitioner within 90 days"); see also 72 P.S. § 5566b.

Thus, the legislature has given Plaintiffs an exclusive statutory remedy to challenge assessments when seeking a refund, and the Court must require Plaintiffs to follow that scheme for their request for reassessments and economic relief related to the 2011-2012 tax increase. See Jordan v. Fayette Cnty. Bd. of Assessment Appeals, 782 A.2d 642, 646 (Pa. Commw. 2001); see also Hanoverian, Inc. v. Lehigh Cnty. Bd. of Assessment, 701 A.2d 288, 289 (Pa. Commw. 1997) ("Pursuant to section 8 of the Local Taxation Assessment Act, 'any person aggrieved by any assessment, whether or not the value thereof shall have been changed since the preceding annual assessment . . . may appeal' on or before September 1 for the subsequent tax year. An appeal of a board of assessment's decision may be taken to the court of common pleas under section 9 of the Tax Act, provided that the assessment was first appealed to the board. The statutory remedy for review of a tax assessment, as set out in sections 8 and 9 of the Tax Act, is mandatory and exclusive. Judicial extensions of the appeal period are generally not granted."); Consol. Gas Supply Corp. v. Cnty. of Clinton, 80 Pa. Commw. 10, 14, 470 A.2d 1113, 1115 (1984) (en banc) ("Appellants also failed to show absence of an adequate statutory remedy. Section 701 of the Act, 72 P.S. § 5453.701(b), specifically provides that 'any person aggrieved by any assessment whether or not the value thereof shall have been changed since the preceding annual assessment, or any taxing district having an interest therein may appeal to the board for relief.' It is clear from this section that Appellant had a statutorily-

prescribed remedy and should have brought its appeal to the Board."); Gagliardi v. Allegheny Cnty., No. 2128 CD 08, 2010 Pa. Commw. Unpub. LEXIS 132, at *3 (Jan. 25, 2010) ("[A]n appeal to the Allegheny County Board of Property Assessment Appeals and Review is the exclusive procedure for Appellant to challenge the tax assessments of his properties.").[14]

Finally, when appealing to the BRT, taxpayers are required to follow the First Class County Assessment Law's jurisdictional appeal deadlines:

> Although the First Class County Assessment Law provides for appeals from real estate assessments to be taken prior to the first Monday in October of the year preceding the year in which the revised assessment will take effect, 72 P.S. § 5341.14(a), neither Lincoln Realty I nor Airport Business Center filed an assessment appeal until after its entire five-year exemption had expired. Statutory provisions exempting property from taxation are to be strictly construed. Thus, '[i]f no appeal is taken from the assessment of taxes within the time allowed by law it becomes binding and conclusive[, and] neither the common pleas nor an appellate court can afford any relief.' This holding constitutes a limitation on subject matter jurisdiction.
>
> Where, as here, taxpayers have failed to file timely appeals as prescribed by the applicable county assessment law, such statutorily

[14] See also Deigendesch v. Cnty. of Bucks, 505 Pa. 555, 565-66, 482 A.2d 228, 233 (1984) ("By statute, review of a tax assessment, rollback or otherwise, is a proceeding within the exclusive jurisdiction of the Board of Assessment Appeals. It has been held that the statutory remedy is mandatory and exclusive. If the appellants wanted to challenge the rollback tax assessment, an appeal to the Board was the exclusive procedure."); Lashe v. N. York Cnty. Sch. Dist., 52 Pa. Commw. 541, 550, 417 A.2d 260, 265 (1980) ("The occupation tax is computed by applying a millage rate, determined by the District, to the occupation assessments determined by the York County Board of Assessment Appeals pursuant to the Third Class County Assessment Law. Appellants should have challenged the ordinance that levied the tax by proceeding under Section 6 of the Act, which provides a specific remedy for aggrieved taxpayers.").

> prescribed remedy is lost beyond recall. Such a result is salutary because the revenue base of taxing bodies should not be left open indefinitely to retrospective claims.

Lincoln Phila. Realty Assocs. I v. Bd. of Revision of Taxes, 563 Pa. 189, 210-11, 758 A.2d 1178, 1190 (2000); see also Locust Lake Vill. Prop. Owners Ass'n v. Monroe Cnty. Bd. of Assessment Appeals, 940 A.2d 591, 596 (Pa. Commw. 2008); Lutes v. Fayette Cnty. Bd. of Assessment Appeals, 936 A.2d 573, 580-81 (Pa. Commw. 2007).

Plaintiffs likely will argue that they are not challenging their individual assessments but, rather, are seeking a rollback of the tax rate increase. Thus, they may claim, they need not follow the procedure for challenging individual assessments, as that is not the focus of their economic claim. Such argument, however, ignores the reality that there is no claim that the tax increase itself was illegal or unauthorized. The claim, rather, is that the assessments are illegal and therefore the taxes based on such assessments should be refunded. Plaintiffs cannot bootstrap their assessment challenge into a tax rate challenge and thereby avoid the mandatory, statutory procedure for challenging an improper assessment.

2. The Court Has No Equity Jurisdiction Over Plaintiffs' Assessment Appeals, Even Though Plaintiffs Assert A Systemwide Challenge

The exclusive statutory method for challenging an overassessment is by an individual administrative appeal to the BRT. We recognize that the courts have occasionally allowed certain types of uniformity challenges to be brought in Common Pleas Court in the form of an equity action. In Borough of Green Tree, the Court explained that courts can exercise equity jurisdiction, notwithstanding a

state administrative scheme, where taxpayers can (1) raise a substantial constitutional issue, and (2) demonstrate that they lack an adequate remedy in the administrative appeal process. 459 Pa. at 274, 328 A.2d at 822; cf. Beattie v. Allegheny Cnty., 589 Pa. 113, 124, 907 A.2d 519, 526 (2006) (suggesting that courts can exercise equity jurisdiction if these two conditions are met, but ultimately dismissing complaint).

Accordingly, Plaintiffs dutifully allege that the BRT is not the appropriate forum because Plaintiffs purportedly "presented a substantial question of the constitutionality of the City's assessment scheme, and the remedies prescribed by statutory assessment laws are inadequate." Amended Complaint, ¶ 93.

However, to the extent that a set of plaintiffs with standing -- in their systemwide non-uniformity allegations -- can raise a substantial constitutional issue and demonstrate that they lack an adequate remedy in the administrative appeal process, at most they can pursue equity claims for injunctive, systemwide relief. But we are aware of no equity courts granting taxpayer refunds at all, based upon uniformity challenges (let alone millions of dollars per year in refunds); instead such taxpayers must follow the administrative scheme mandated by the Legislature, as explained above.

In Clifton v. Allegheny Cnty., 600 Pa. 662, 969 A.2d 1197 (2009), the Pennsylvania Supreme Court's most recent consideration of a systemwide uniformity challenge to a county's assessment system, the Court took equity jurisdiction over the uniformity challenge, although the Supreme Court did not specifically analyze jurisdiction.

Critically, however, there was no request for refunds in Clifton, nor any request for individualized assessment relief. 600 Pa. at 717; 969 A.2d at 1231. Moreover, the trial court in Clifton had given the county several years to fully resolve the county's prospective assessment problems, without any suggestion of refunds or individualized relief in the interim. Clifton v. Allegheny County, Nos. GD05-028638, GD05-028355, 2009 Pa. Dist. & Cnty. Dec. LEXIS 235, at *26 (Allegheny Cnty. Nov. 10, 2009).

On the contrary, where taxpayers ask for economic relief, even in systemwide challenges, the courts have held that the assessment appeal process is fully adequate, and that those taxpayers must pursue their refunds through the assessment appeal process, and not through an equity action. In Dunn v. Allegheny County, 877 A.2d 504 (Pa. Commw. 2005), the Commonwealth Court analyzed the very question at issue here: whether taxpayers must pursue the statutory assessment appeal process in order to obtain refunds, even if those taxpayers allege a systemwide uniformity violation.

In Dunn, taxpayers filed a class action complaint on behalf of all property owners in Allegheny County, alleging that a certain countywide tax increase was non-uniform. As here, the taxpayers brought claims for declaratory and injunctive relief, as well as for refunds. During the pendency of the lawsuit, the county conducted a county-wide reassessment, rendering the claims for declaratory and injunctive relief moot. Dunn, 877 A.2d at 515 n.19. Regarding the claim for refunds, however, the trial court determined that the taxpayers could not maintain their suit at law or in equity, as the taxpayers had failed to pursue their adequate

statutory remedy for a refund of the purportedly improperly collected taxes. Dunn, 877 A.2d at 509.

The Commonwealth Court affirmed. The taxpayers argued on appeal that the trial court should have retained equity jurisdiction over the claim and ordered refunds because the taxpayers were entitled to "backward-looking relief," and no other remedy besides refunds from the trial court could "afford them retrospective relief for the constitutional violation." Dunn, 877 A.2d at 515.

The Commonwealth Court disagreed with the taxpayers, finding that the taxpayers had an adequate venue for obtaining such relief, namely the perfectly adequate statutory scheme. The Court explained:

> The General Assembly provided Taxpayers with a statutory scheme to contest the instant assessments, pay the taxes due thereon under protest, and to obtain a refund of the taxes paid. Thus, . . . there was a statutory scheme in place under which Taxpayers could have obtained a refund of the purportedly unlawful taxes that were paid. . . . However, rather than availing themselves of this 'constitutionally adequate' statutory scheme, Taxpayers instead chose to initiate the instant class action suit in which they are precluded from obtaining a refund of the purportedly unlawful taxes. . . . [T]he trial court did not err in denying their claim for refunds.

Dunn, 877 A.2d at 516-17.

The taxpayers appealed the Commonwealth Court's decision, and the Supreme Court granted review on one issue: "Whether the trial court lacked equitable jurisdiction to rule on the merits of taxpayers' claim because the statutory remedy available for seeking individual tax refunds would not provide full relief?" Dunn v. Bd. of Prop. Assessment, 590 Pa. 620, 621, 913 A.2d 863 (2006). The Supreme Court affirmed, without opinion, the Commonwealth Court's holding that

the statutory remedy was adequate, and that the taxpayers could not maintain their suit in equity, because the taxpayers failed to pursue their adequate statutory remedy for a refund of the purportedly improperly collected taxes. Dunn v. Bd. of Prop. Assessment, 594 Pa. 410, 936 A.2d 487 (2007).

Similarly here, Plaintiffs have an adequate statutory scheme: contest the instant assessments and obtain a refund of the taxes paid. Plaintiffs simply chose to initiate the equity action instead. Accordingly, the Court should deny Plaintiffs' equity claim for economic relief. See also Israelit v. Montgomery County, 703 A.2d 722, 725 (Pa. Commw. 1997) (allowing a taxpayer's constitutionally-based claims for declaratory and injunctive relief to proceed in the Common Pleas Court, while dismissing the taxpayer's request for tax refunds).

Therefore, even if Plaintiffs can somehow pursue their claims for system-wide injunctive relief in this Court, they have no basis whatsoever for pursuing economic relief here. Indeed, Plaintiffs' chief examples regarding gaps in the BRT's authority -- i.e., the BRT allegedly lacks the authority: to "modify or direct in any way the assessment practices, timing, policies, or methodologies of the City," Amended Complaint, ¶ 29, to "implement a City-wide reassessment of properties," id., to "declare any assessment practices of the City unconstitutional or otherwise illegal," id., to "decrease the values of overassessed properties," whose owners for some reason do not appeal, Amended Complaint, ¶81, and to "increase the assessments of underassessed properties, whose owners have no reason to appeal," id. -- at most address the BRT's lack of authority to offer system-wide,

injunctive relief, not the BRT's authority to provide relief in individualized overassessment appeals.

And the potential size of this case -- millions in economic relief per year -- is another barrier to the award of mass refunds in equity that Plaintiffs now seek. Indeed, even where the Pennsylvania Supreme Court has held that counties had no authority to tax certain (non-real estate) property at all, it has refused to order a mass refund of the taxes already collected, citing the fiscal impact on government. See Oz Gas, Ltd. v. Warren Area Sch. Dist., 595 Pa. 128, 938 A.2d 274 (2007) ("To avoid the potentially devastating consequences to taxing entities, it is important that taxes collected pursuant to a valid statute remain valid unless and until otherwise determined by this Court"). Given the massive consequences to both the City and the School District of a rollback of a tax increase, the Court should reject Plaintiffs' claims for economic relief.

Therefore, the Court should strike Plaintiffs' claim for economic relief in subsections (g) and (h). Indeed, Plaintiffs' particularized request in subsection (h) is especially egregious. This subsection asks the Court to require the City: (1) to first determine the amounts by which all overassessed properties are disproportionately penalized, and (2) to then set aside such amounts as a reserve for unidentified future claimants.

As noted, however, the BRT is responsible for performing such calculations, so the Court should strike subsection (h) for this reason alone. Plaintiffs' request amounts to a prayer for an advisory opinion heaped upon advisory opinion, given that we do not even know if the purported "future claims by the affected

taxpayers" will ever materialize. In particular, Plaintiffs are asking the Court: (1) to order the City to perform complicated calculations, (2) that should be performed by the BRT when timely appeals have been filed, (3) in cases that have not been filed and may never be filed, (4) on behalf of taxpayers who are not even before the Court. The Court should strike this request.

Moreover, Plaintiffs' request does not ask the City to actually pay refunds now based upon current judgments, but asks the City to set aside money in reserve for future payment in the event of the entry of some kind of future judgment. However, we are not aware of any authority requiring the City to set aside money for future claims. As in any other case, an aggrieved party can get paid at the time of judgment, but that party has no right to require the defendant to set aside money prior to judgment, particularly where there are no allegations of inability to pay any amounts ordered on individual appeals. Therefore, the Court should strike Plaintiffs' request.

3. The Court Should Reject Plaintiffs' Claim That The Legislature's Requirement That Plaintiffs Must Pursue Their Appeals With The BRT Violates Due Process

Perhaps recognizing that the General Assembly has clearly required that Plaintiffs pursue their individualized assessment appeals with the BRT, Plaintiffs contend that the individualized BRT appeal procedure, for all taxpayers, violates due process. Specifically, Plaintiffs claim that they are not required to pursue their claims with the BRT because the BRT appeal procedure, through which individual taxpayers can appeal OPA's initial assessments (formerly BRT's initial assessments), violates due process because taxpayers cannot cross-examine the

assessors, because the BRT engages in *ex parte* communications with OPA, and because, as an example of the *ex parte* communications, the OPA gives the BRT a document entitled "Evaluator's Answer to Appeal," which the OPA allegedly uses to justify its initial assessment, but which it allegedly does not make available to any individual taxpayer unless the individual taxpayer asks for it. Amended Complaint, ¶ 28.

Plaintiffs argue here that the BRT is ill-equipped to handle any assessment appeals, even garden-variety individual appeals. This is a far-reaching contention, asking this Court to hold that the BRT's entire appeal procedure violates due process, and that the BRT has violated, and continues to violate, due process in every individual assessment appeal since the BRT's inception. Moreover, Plaintiffs' due process challenge would presumably apply not just to the BRT, but to most assessment boards in the entire Commonwealth. Therefore, if Plaintiffs were correct, virtually every decision evaluating an assessment board's ruling would be rendered suspect.

However, Plaintiffs' broad contention is wrong, for at least three reasons.

First, the Pennsylvania Supreme Court has explained that taxpayers in Philadelphia have a fair process for presenting their assessment appeals to the BRT. In Lincoln Phila. Realty Assocs. I v. Bd. of Revision of Taxes, 563 Pa. 189, 205, 758 A.2d 1178, 1187 (2000), certain taxpayers alleged that the BRT's hearing procedures violated their due process rights because the "close working relationship between the City and the [BRT]" compromised the fairness of the taxpayers' hearings before the BRT. Similarly, Plaintiffs here contend that the

close relationship between the OPA and the BRT, which "regularly engages in *ex parte* communications with assessors and supervisory staff of the OPA," Amended Complaint ¶ 28, compromised the fairness of taxpayers' hearings now, and therefore violated Plaintiffs' due process rights.

The Supreme Court rejected this argument:

> If the Board were the factfinder of last resort, whose decision could be reversed only for an abuse of discretion, an error of law, or lack of substantial evidential support, Taxpayers' arguments might warrant closer scrutiny. Such is not the case, however, as an appeal from the [BRT's] ruling is heard by the trial court *de novo*. Thus, the determination to be reviewed on appeal is not that of the allegedly compromised [BRT], but that of the independent and impartial trial court. . . . [T]his Court has recognized that *de novo* review serves an ameliorative function where the initial decisionmaker is not an independent body.

Lincoln Philadelphia, 563 Pa. at 204-205, 758 A.2d at 1187.

Thus, the full process for resolving assessment challenges -- appeal to the BRT, followed by a *de novo* appeal to the trial court -- satisfies due process. See Garrett Group, L.P. v. County of Schuylkill, 667 A.2d 255, 259 (Pa. Commw. 1995) ("Undoubtedly, the trial court's *de novo* review of the Board's decision cured any real or perceived due process violations that purportedly occurred during the Board's assessment appeal hearing."); Consol Pa. Coal Co. v. Board of Assessment Appeals, 151 Pa. Commw. 539, 550, 617 A.2d 852, 857 (1992) ("As the Board notes in its brief, any improper action at the Board level was cured by the trial *de novo* in the common pleas court."). Therefore, the Board was an adequate forum for Plaintiffs to present their assessment appeals.

Of course, this Court has jurisdiction to evaluate its own jurisdiction, and therefore this Court has jurisdiction to consider this legal issue of whether due process is satisfied by the *de novo* trial court appeal, as opposed to requiring the Board to consider the legal issue in several, individual assessment appeals. See Kowenhoven v. Cnty. of Allegheny, 587 Pa. 545, 563, 901 A.2d 1003, 1014 (2006).

But, once this Court concludes (consistent with Lincoln Philadelphia) that due process is satisfied through the full procedure (i.e., appeal to the BRT, followed by *de novo* appeal to the trial court), Plaintiffs are then bound to pursue this legislatively mandated procedure. See also Dunn, 877 A.2d at 516 ("[The General Assembly] provided Taxpayers with a statutory scheme to contest the instant assessments, pay the taxes due thereon under protest, and to obtain a refund of the taxes paid. Thus, in accordance with the Due Process Clause, . . . there was a statutory scheme in place under which Taxpayers could have obtained a refund of the purportedly unlawful taxes that were paid."). Therefore, because the General Assembly's procedure comports with due process, this Court should dismiss Plaintiffs' claim for economic relief.

Second, Plaintiffs lack standing to pursue this due process claim. Plaintiffs claim that taxpayers' due process rights were violated because the BRT hearings were allegedly tainted by *ex parte* communications. But even if such *ex parte* communications occurred, Plaintiffs can only assert a claim if they were harmed by the tainted communications. And such harm could only occur if Plaintiffs actually

pursued a timely hearing, and were subject to any allegedly improper communications.

But here, none of the Plaintiffs allege that they filed 2011 appeals with the BRT challenging their own assessments, and certainly none of the Plaintiffs allege that their own hearings were tainted. Therefore, Plaintiffs themselves suffered no due process harm as a result of any alleged flaws in the BRT appeal process. At best, then, Plaintiffs' due process complaints apply only to other property owners, and Plaintiffs cannot pursue claims on behalf of others.

Put differently, Plaintiffs' asserted flaws with the BRT's execution of its procedures in prior cases involving non-Plaintiffs do not excuse Plaintiffs from their obligation to file a timely assessment appeal with the BRT. Further, Plaintiffs could pursue any allegations of procedural deficiencies in their BRT appeals by appealing to Common Pleas Court and arguing to Common Pleas that the hearing procedures violated due process. But Plaintiffs offer no support for their claim that they can simply avoid the legislatively mandated BRT appeal process entirely.

Finally, at a minimum, the Court should require Plaintiffs to re-plead their due process allegations with sufficient specificity. In particular, Plaintiffs should be required to identify the specific year that the alleged *ex parte* communications occurred. In fact, because Plaintiffs seek a refund of the 2011 tax increase, Plaintiffs must plead that the allegedly improper communications occurred during the 2011 appeals (i.e., those appeals that were filed by the first Monday in October, 2010), as opposed to any appeals for prior years.

And such specificity -- distinguishing between pre-2011 appeals (which are not at issue for Plaintiffs' refund claim) and 2011 appeals (which is the only year at issue for Plaintiffs' refund claim) -- is not mere formalism, but instead is substantively significant. When the BRT restructuring was completed in October 2010, not only was the BRT's assessment function abolished (and replaced by OPA), but the BRT's appeals function was revised and improved as well. Once again, Plaintiffs' historical allegations shed little light on the current practices.

IV. Preliminary Objection Numbers 6, 7, and 8: The Court Should Dismiss Plaintiffs' Overreaching Notification Request Because The City Has No Obligation To Notify Other Taxpayers Of Any Overassessment, And Because Plaintiffs Lack Standing To Pursue This Claim

As in their initial Complaint, Plaintiffs take issue with the City's imposition, and enforcement, of tax liens where those liens are based upon delinquencies arising from overassessments that are allegedly non-uniform. As with their economic relief claim, Plaintiffs' lien claim arises from their objections to the underlying assessments.

By way of background, when a taxpayer fails to pay his real estate tax, the City's primary method of enforcement against delinquent taxpayers is to place a lien on the property, 53 P.S. § 7102, and then, if the taxpayer continues to withhold payment, to enforce the lien by conducting a sheriff's sale on the property, 53 P.S. § 7283, or collecting payment upon any private sale of the property.

Plaintiffs now ask the Court to "order the City to develop and implement procedures to review all properties subject to existing tax liens to ensure that no portion of the alleged delinquency reflected in the tax lien is attributable to an

historic overassessment and if any such portion is so attributable, [to then order] the City to so notify each affected taxpayer in a format and manner reasonably designed to be understandable by the ordinary taxpayer." Amended Complaint, Prayer for Relief, (i). Furthermore, Plaintiffs ask the Court to prohibit "the City from imposing any additional, or enforcing any existing, property tax liens on over-assessed properties unless and until the City has conducted the review and notification referenced in subsection (i) above." Amended Complaint, Prayer for Relief, (j).

Plaintiffs' request in subsections (i) and (j) -- asking the Court to require the City to review the tax lien properties for overassessments, to then notify the affected taxpayers, and to stay collections until the notification has occurred -- should be stricken, for four alternative reasons.

First, as above, Plaintiffs cannot pursue this claim on behalf of other taxpayers. Specifically, Plaintiffs ask the Court to require the City to identify, and notify, "each" taxpayer in the City whose property is subject to a lien as a result of an overassessment. Amended Complaint, Prayer for Relief (i).

But Plaintiffs offer no support for the unprecedented concept that the City would be required to give notice to individuals who are not parties to this action. Indeed, while the class action procedures specifically contemplate notice to affected individuals who are not yet participating in the lawsuit, Pa. R. Civ. P. 1712, this is not a class action (nor could it be; see supra n.10), so there is simply no basis for requiring the City to give notice to non-Plaintiffs. In re Appeal of Smith, 49 Pa. Commw. 591, 595, 412 A.2d 184, 186 (1980) ("Ms. Smith received

notice of the Board's determinations three days after her hearing. The fact, if it is a fact, that others did not receive timely notice did not adversely affect her and therefore provides her no basis for attacking her assessments.").

Second, even if a Plaintiff could somehow sue to require notice to non-Plaintiffs, these Plaintiffs here do not have standing to challenge the City's lien procedures here. Out of the eighteen Plaintiffs, only one alleges that he is subject to a tax lien, so the other seventeen automatically do not have standing to complain about the City's procedures regarding properties with tax liens. And as to the one Plaintiff who alleges that his property is subject to a tax lien, Valentino Rudi, see Amended Complaint ¶ 18, he does not allege that he is overassessed (i.e, he is one of the eight Plaintiffs who could not even offer the conclusory assertion that he was overassessed relative to the district).

In other words, given that Plaintiff Rudi fails to plead overassessment, he has no justification whatsoever for his failure to pay taxes, and it would make no sense to prohibit lien enforcement against him. Nor can he complain about enforcement of liens against overassessed properties, since he does not fall within such a "class." Thus, there are no individual Plaintiffs who can complain about the City's placement of liens.

Third, Plaintiffs' request makes no sense as a Prayer for Relief. Put differently, the items in a Prayer for Relief normally constitute the remedies that a plaintiff would seek should he prevail in his case. In subsection (a) of their Prayer for Relief, for example, Plaintiffs ask the Court to declare the City's system unconstitutional. This is a typical request in a Prayer for Relief, should Plaintiffs

prevail (the Court should ultimately deny this request for substantive reasons -- namely, Plaintiffs failed to establish that the City's system is unconstitutionally non-uniform -- but it is a logical request in a Prayer for Relief).

In this context, however, Plaintiffs' notice requests in subsections (i) and (j) defy logic. According to Plaintiffs' Amended Complaint, after they win the case, the Court should order the City to determine whether taxpayers' properties are overassessed. One wonders how Plaintiffs could prevail in the first place without establishing overassessment. Moreover, it would be nonsensical to require the City to identify overassessments after the case is already over. Indeed, it is Plaintiffs' burden to prove overassessments, not the City's burden to prove Plaintiffs' case for them.

Fourth, Plaintiffs' last request (in subsection (j)) -- that the Court prohibit the City from enforcing any liens on overassessed properties until the City has provided the requested notice -- is particularly flawed.

According to Plaintiffs, the City should have virtually no means to compel the payment of delinquent real estate taxes on overassessed properties while it is performing Plaintiffs' unprecedented and unsubstantiated notice procedure.

But no Plaintiff, nor any other resident of the City, has a right to refuse to pay his or her assessed taxes. Therefore, even if overassessed, each Plaintiff has a right to challenge his or her assessment through an appeal to the BRT. Subject to obtaining relief through that process, each taxpayer still must pay his or her taxes. See 72 P.S. § 5020-518.1. The refusal to pay is not a rightful challenge to an assessment, it is a violation of law.

Plaintiffs are asking this Court to strip the City of virtually all of its ability to enforce its real estate tax laws. And Plaintiffs' request is limitless. Specifically, Plaintiffs do not limit their request to flawed 2011 assessments or to the 2011-2012 tax increase, but seek to prohibit sheriff's sales for all overassessments, no matter how far back in time those assessments were completed. But it is well established that "it is the responsibility of the taxpayer to challenge an assessment in the year the assessment is issued," that such assessments become "binding and conclusive" if no appeal is taken in that year, and that taxpayers cannot use other challenges -- such as Plaintiffs' lien challenge herein -- to bypass the statutory assessment scheme. Locust Lake Vill. Prop. Owners Ass'n v. Monroe Cnty. Bd. of Assessment Appeals, 940 A.2d 591, 596 (Pa. Commw. 2008). Therefore, Plaintiffs' attempts to collaterally challenge assessments for all past years must be rejected.

Moreover, if Plaintiffs were to prevail, and the City had little to no means of enforcing delinquent real estate taxes on overassessed properties, then the City would have little means of compelling payment of any real estate taxes that are currently due or overdue, or that become due in 2012 or after.

By prohibiting the City from collecting delinquent taxes with respect to any overassessed property owner -- most of whom did not pursue a proper administrative challenge -- Plaintiffs' over-reaching request would devastate the City and the School District. The granting of Plaintiffs' request to stay enforcement of liens would wreak havoc with the City's budget and could ravage

the School District's education efforts. In short, Plaintiffs' lien request is utterly unworkable and inequitable.

Finally, we note that Plaintiffs' request simply makes no sense -- it is nonsensical to give the City the power to tax, but then take away the City's enforcement mechanism, turning the real estate tax into a voluntary payment program. For these reasons, Plaintiffs' request in subsections (i) and (j) should be dismissed.

V. Preliminary Objection Number 10: The Court Should Strike Plaintiffs' Request Ordering The City To Produce Documents

Plaintiffs' Amended Complaint asks the Court to order the City to provide documents. Specifically, Plaintiffs seek to compel the City "to make available to the public, and to directly notify each affected property owner, of the City of Philadelphia's calculations, for the periods 2007 to present: (i) of each property's ratio of assessed value to actual market value, broken down by property type; (ii) of the COD and PRD; and (iii) the applicable Common Level Ratio and Established Predetermined Ratio (as those terms are defined by Pennsylvania law), in a format and manner reasonably designed to be understandable by the ordinary taxpayer." Amended Complaint, Prayer for Relief (f).

Thus, Plaintiffs ask the Court to require the City to produce substantive documents that would help Plaintiffs prove their case. There are several flaws with Plaintiffs' unusual request, but the most obvious flaw is that Plaintiffs' document-production request is a discovery request, not a substantive Prayer for Relief request properly included in a Complaint. Put differently, as explained above, the

items in the Prayer for Relief normally constitute the remedies that a plaintiff would seek should he prevail in his case.

In this context, Plaintiffs' discovery request in subsection (f) is illogical. According to Plaintiffs' Amended Complaint, after they win the case, the Court should order the City to provide substantive proof. Naturally, one wonders how Plaintiffs plan to litigate the case without such proof but, even if Plaintiffs should somehow prevail without such proof, and, thus, even if the Court were to declare the City's assessment system unconstitutional, it would be nonsensical to then require the City to produce documents, after the case is already over. For this reason alone, the Court should dismiss Plaintiffs' discovery request.

Further, Plaintiffs' request, which asks for assessment information dating back to 2007, is futile, since any relief dating back to 2007 is long since barred, given that individuals have until the first Monday in October of the year preceding the year being assessed to appeal their assessments. 72 P.S. § 5341.14(a).

Finally, the individual components of the discovery requests themselves are flawed. The first component -- "each property's ratio of assessed value to actual market value" -- is already available on OPA's website, which provides the assessed value and market value for every property. See http://opa.phila.gov/opa.apps/Search/SearchForm.aspx?url=search. In any event, we already know that the answer, of assessed value to market value for each property, is 32 percent, or the City's EPR. It is Plaintiffs, not the City, who contend that the City's market value assignments are flawed, so it is incumbent

upon Plaintiffs, not the City, to prove current market values that differ from the market values assigned by the City.

Regarding the second and third components -- the COD, PRD, CLR, and EPR -- we fail to see how such information would be helpful to Plaintiffs after this case has already been concluded. If this case ever were to go to trial, and Plaintiffs were to prove at trial, a COD and PRD for the City, and the applicable CLR and EPR, we will respond at that time with appropriate defenses. But it is not our burden to prove that the City's system is constitutional now; it is Plaintiffs' burden to prove their assessments unconstitutional, so it is Plaintiffs who must establish these measures.

RELIEF

For all the reasons set forth above, the Court should order the following relief:

(1) Defendant's Preliminary Objections are SUSTAINED and Plaintiffs' entire Amended Complaint (Counts I, II, and III) is DISMISSED in its entirety, due to lack of standing, and due to failure to allege deficiencies with the current system.

(2) In the alternative:

To the extent that Plaintiffs seek relief on behalf of other taxpayers besides Plaintiffs themselves, Defendant's Preliminary Objections as to those other taxpayers are SUSTAINED, and these claims are DISMISSED;

Defendant's Preliminary Objections as to Plaintiffs' own claims for economic relief (subsections (g) and (h) of Plaintiffs' Prayer for Relief) are SUSTAINED, and these claims are DISMISSED;

Defendant's Preliminary Objections as to Plaintiffs' claims for notice to overassessed lienholders (subsections (i) and (j) of Plaintiffs' Prayer for Relief) are SUSTAINED, and this claim is DISMISSED; and

Defendant's Preliminary Objections as to Plaintiffs' Discovery Request (subsection (f) of Plaintiffs' Prayer for Relief) are SUSTAINED, and these claims are DISMISSED.

Respectfully submitted,

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Dated: June 17, 2011

CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, I served a true and correct copy of the foregoing Defendant City of Philadelphia's Preliminary Objections To Plaintiffs' Amended Complaint, upon the following counsel of record by first class mail and electronic service:

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