IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anthony F. Butch, Appellant	:	
v.	:	No. 2287 C.D. 2007
	:	Argued: June 9, 2008
Board of Assessment Appeals of Berks County and Brandywine Heights Area School District	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SMITH-RIBNER FILED: August 14, 2008

Anthony F. Butch appeals from the August 30, 2006 and November 9, 2007 orders of the Court of Common Pleas of Berks County, which held that the Berks County Board of Assessment Appeals (Board) properly changed the assessment of Butch's property for county/township and school district taxes in 2005 and determined the market value and assessed value of his property for tax years 2005 through 2008. The trial court rejected Butch's arguments that the assessment change constitutes an illegal spot reassessment, that it was prohibited under the doctrine of collateral estoppel and that it lacked uniformity.

On August 31, 1995, Butch purchased a 1.15-acre unimproved lot in Longswamp Township (Township) within the Brandywine Heights Area School District (School District) for $34,000. In September 1995 he began construction of a residence on the lot after obtaining necessary permits from the Township. Butch acted as the general contractor and incurred expenses of $87,819 for construction

of the residence, which was completed in April 1998 and has since been occupied by Butch. Because the Township did not notify the Berks County Assessment Office (Assessment Office) of the permits, the Assessment Office was unaware of the construction until sometime in 2005 when Butch listed his property for sale at $425,000. As of September 2006 the asking price was reduced to $359,900 for the property, which ultimately was removed from the market.

The Assessment Office notified Butch by notices of August 23, 2005 of the change in his assessment for tax years 2002 through 2005 from $26,800, the assessed amount for the unimproved lot, to $377,700 based on "added dwelling." Reproduced Record (R.R.) at 7a - 10a. Butch appealed to the Board, and by notices dated October 25, 2005 the Assessment Office voided the changes for 2002 through 2004 pursuant to its policy of not reassessing property retroactively when it is unaware of improvements to a property through no fault of the owner. After a hearing, the Board issued a final notice on March 8, 2006 reassessing the property at $377,700, effective January 1 and July 1, 2005 for the County/Township and School District property taxes, respectively. Butch appealed to the trial court, and he argued that the reassessment constitutes a spot reassessment[1] and was prohibited under the doctrine of collateral estoppel because the Assessment Office had voided the 2002 through 2004 assessments and that the assessment lacked uniformity and was erroneous. The School District intervened in the appeal.

[1]Section 1.1 of the Act commonly known as the Second Class A and Third Class County Assessment Law, Act of June 26, 1931, P.L. 1379, *as amended*, added by Section 1 of the Act of December 13, 1982, P.L. 1165, 72 P.S. §5342.1, defines a "spot reassessment" as "[t]he reassessment of a property or properties that is not conducted as part of a countywide revised reassessment and which creates, sustains or increases disproportionality among properties' assessed values." Assessment boards are prohibited from engaging in a spot reassessment. Section 7.1, added by Section 2 of the Act of July 19, 1991, P.L. 91, 72 P.S. §5348.1.

The trial court bifurcated the case and conducted an August 28, 2006 *de novo* hearing only on the spot reassessment and collateral estoppel issues. By decision and order entered August 30, 2006 in *Butch v. Berks County Board of Assessment Appeals*, 83 Pa. D. & C.4th 517 (2006), the trial court determined that the reassessment did not constitute a spot reassessment and that the doctrine of collateral estoppel did not apply. It cited Section 6.1 of the Act commonly known as the Second Class A and Third Class County Assessment Law (Assessment Law), Act of June 26, 1931, P.L. 1379, *as amended*, added by Section 2 of the Act of July 19, 1991, P.L. 91, 72 P.S. §5347.1, which provides that "[t]he subordinate assessors may change the assessed valuation on real property when a parcel of land is divided and conveyed away in smaller parcels or when improvements are made to real property or existing improvements are removed from real property or are destroyed." It distinguished *Radecke v. York County Board of Assessment Appeals*, 798 A.2d 265 (Pa. Cmwlth. 2002), which held that an assessment change must come at the time of improvements and not at some arbitrary future time. Unlike in *Radecke*, the Assessment Office had no notice of the improvements until 2005.[2]

The trial court held another *de novo* hearing on November 7, 2007 on the uniformity and property valuation issues. The Board's expert witness, Thomas J. Bellairs, a state-certified appraiser, testified that the market or sales approach is more appropriate in determining the valuation of a single-family residence than the cost approach and that the income approach did not apply. He opined that the fair market value of Butch's property was $300,000 based on the recent sale prices of

[2]By order dated October 11, 2006, the Court quashed Butch's appeal from the trial court's August 30, 2006 order as an appeal from an interlocutory order. *See* Trial Court's Docket Summary, pp. 1 - 2; Supplemental Reproduced Record at 1b - 2b.

five comparable properties within the School District. Butch testified that his property value was $121,000 to $122,000, relying on $34,000 paid to purchase the unimproved lot and the construction cost of $87,819.

The trial court indicated that although tax equalization generally is achieved through the State Tax Equalization Board's calculation of the "common level ratio,"[3] a taxpayer may prove lack of uniformity through assessment-to-value ratios of similar properties. *See Downingtown Area School District v. Chester County Board of Assessment Appeals*, 590 Pa. 459, 913 A.2d 194 (2006). The trial court concluded that Butch failed to survey an ample number of properties to show that he was paying more than his fair share of taxes, and it accepted Bellairs' opinion of fair market value and rejected Butch's testimony as disingenuous and lacking in merit. Applying the fair market value of $300,000 to the common level ratio for tax years 2005, 2006, 2007 and 2008, the trial court assessed valuation at $258,900 for 2005, $240,000 for 2006, $225,000 for 2007 and $204,300 for 2008.[4]

Butch argues that the Assessment Office engaged in an illegal spot reassessment when it reassessed the property based on the substantially appreciated value more than seven years after completion of the residence construction. While acknowledging that Section 6.1 of the Assessment Law allows changes in assessed valuation based on improvements to the property, he maintains that the change

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[3]A "common level ratio" is "[t]he ratio of assessed value to current market value used generally in the county as last determined by the State Tax Equalization Board pursuant to the act of June 27, 1947 (P.L. 1046, No. 447), referred as the State Tax Equalization Board Law, [72 P.S. §§4656.1 - 4656.17]." Section 1.1 of the Assessment Law.

[4]In a tax assessment appeal, this Court's review is limited to determining whether the trial court abused its discretion, committed an error of law or reached a decision not supported by substantial evidence. *Sher v. Berks County Board of Assessment Appeals*, 940 A.2d 629 (Pa. Cmwlth. 2008).

should be made at the time of improvements, not at some other arbitrary time; that the Board relied on the property's listed sales price rather than its fair market value to increase the assessment;[5] and that the court should have given considerable weight to Butch's testimony regarding his construction costs. As for uniformity, Butch submits that the average assessment-to-value ratio of comparables used by Bellairs was substantially lower than the ratio for Butch's property and that the trial court erroneously required him to provide a survey of more than five properties to show non-uniformity. Butch has abandoned his collateral estoppel argument.

The Court agrees with the trial court's disposition of the issues in its thorough and well-written opinions filed August 30, 2006 and November 9, 2007. The Court therefore adopts the trial court's reasoning and affirms its orders on the basis of opinions issued by Judge Scott E. Lash in *Butch v. Berks County Board of Assessment Appeals*, 83 Pa. D. & C.4th 517 (2006), and *Butch v. Berks County Board of Assessment Appeals* (No. 06-2702, filed November 9, 2007).

DORIS A. SMITH-RIBNER, Judge

[5]In *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336 (1989), cited by Butch, the Supreme Court held that the assessments of recently purchased real properties based on their sale prices, while making only minor modifications in assessments of lands that had not been recently sold, violated the equal protection clause of the Fourteenth Amendment. That holding, however, has no application under the facts presented here. Butch also claims that the value of the land was improperly reassessed from $26,800 to $66,200, citing *McCrady v. Board of Property Assessment, Appeals, Review & Registry of Allegheny County*, 827 A.2d 522 (Pa. Cmwlth. 2003), which involved the issue of whether the assessment board was permitted to revise the prior assessment of the land under the trailer moved onto the property. The Court held that the board had no authority to reassess the real property beyond the addition of the trailer. Nothing in this record, however, supports the contention that the Board increased the assessed value of the land to $66,200.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anthony F. Butch, Appellant	:	
v.	:	No. 2287 C.D. 2007
Board of Assessment Appeals of Berks County and Brandywine Heights Area School District	:	

O R D E R

AND NOW, this 14th day of August, 2008, the Court affirms the orders of the Court of Common Pleas of Berks County on the basis of the opinions issued by Judge Scott E. Lash in *Butch v. Berks County Board of Assessment Appeals*, 83 Pa. D. & C.4th 517 (2006), and *Butch v. Berks County Board of Assessment Appeals* (No. 06-2702, filed November 9, 2007).

DORIS A. SMITH-RIBNER, Judge

ANTHONY F. BUTCH, Appellant v. BERKS COUNTY BOARD OF ASSESSMENT APPEALS, Appellee and BRANDYWINE HEIGHTS AREA SCHOOL DISTRICT, Intervenor	:	IN THE COURT OF COMMON PLEAS OF BERKS COUNTY PENNSYLVANIA CIVIL ACTION - LAW No. 06-2702 REAL ESTATE TAX ASSESSMENT APPEAL

Alfred K. Hettinger, Esquire, attorney for Appellant, Anthony F. Butch

Edwin L. Stock, Esquire, attorney for Appellee, Berks County Board of Assessment Appeals

Intervenor, Brandywine Heights Area School District, did not participate

DECISION AND ORDER, Scott E. Lash, J. August 30, 2006

The Appellant, Anthony F. Butch (hereinafter "Butch"), has appealed from the Decision of the Board of Assessment Appeals of Berks County (hereinafter "Board") assessing real estate owned by Taxpayer in the amount of Three Hundred Seventy-Seven Thousand Seven Hundred Dollars ($377,700.00). Butch claims that the action taken by the Board increasing the assessment on the property constitutes a spot assessment. Butch also argues that the Board's action was impermissible on the basis of collateral estoppel. Finally, Butch disputes the valuation. On June 12,

2006, this Court bifurcated the legal issues from the valuation issue and scheduled trial on the legal issues, held on August 28, 2006.

The Court enters the following Findings of Fact:

I. FINDINGS OF FACT

1. The Appellant, Anthony F. Butch (hereinafter "Butch"), is an adult individual who resides at 555 Locust Street, Mertztown, Longswamp Township, Berks County, Pennsylvania 19539.

2. The Berks County Board of Assessment Appeals (hereinafter "Board") is located at the Berks County Services Center, Third Floor, 633 Court Street, Reading, Berks County, Pennsylvania 19601.

3. Intervenor, Brandywine Height Area School District, is a school district with a principal office at 103 Old Topton Road, Mertztown, Longswamp Township, Berks County, Pennsylvania. Brandywine Heights Area School District filed its Notice of Intervention on May 18, 2006.

4. Taxpayer is the record owner of a property located at 555 Locust Street, Mertztown, Longswamp Township, Berks County, Pennsylvania (hereinafter "Property").

5. The Property is located in the Brandywine Heights School District.

6. The Property is identified by the Berks County Assessment Office by Pin Number 59-5473-18-20-8377.

7. Butch purchased the Property on August 31, 1995. At that time, the Property was unimproved.

8. In September 1995, Butch began constructing a residence on the Property. This construction took almost two (2) years. Eventually on April 13, 1998, Butch began occupying the Property.

9. In constructing the dwelling, Butch obtained all the necessary permits from Longswamp Township, including a building permit.

10. Although the necessary permits were duly issued by Longswamp Township, neither the Board nor the Assessment Office of Berks County were ever notified of the existence of the permits, nor received a copy of same.

11. The Assessment Office requires that municipalities forward all building permits to the Assessment Office.

12. The Assessment Office was unaware of the construction of the residence until sometime in 2005, when Butch placed his home up for sale.

13. By notices mailed on August 23, 2005, the Assessment Office notified Butch of the imposition of a new assessment for the Property, based upon the improvements, at Three Hundred Seventy-Seven Thousand Seven Hundred Dollars ($377,700.00). The explanation provided in the notice was "added dwelling." Notices were sent for tax years 2002, 2003, 2004 and 2005.

14. Butch appealed these determinations and the matters were scheduled for a hearing.

15. The Assessment Office has a policy that in circumstances where an improvement is made to a property and the Assessment Office does not become aware of the improvement and,

therefore, does not reassess at the earliest possible time, through no fault of the property owner, the Assessment Office will not impose reassessment retroactively.

16. Upon review, the Assessment Office determined that the aforesaid policy applied to this case and, therefore, the reassessments for 2002, 2003 and 2004 were voided. Notice to Butch of the voiding of the reassessments for these three (3) years was sent on October 25, 2005. The reassessed value for 2005 remained at Three Hundred Seventy-Seven Thousand Seven Hundred Dollars ($377,700.00).

17. On February 27, 2006, a hearing was held before the Board. On March 8, 2006, the Board issued a final notice to Butch setting forth that the assessment on the Property would remain at Three Hundred Seventy-Seven Thousand Seven Hundred Dollars ($377,700.00), effective January 1, 2005 for county and township and July 1, 2005 for school.

18. On March 22, 2006, Butch appealed the Board's determination to the Court of Common Pleas.

II. DISCUSSION

Generally speaking, once a valuation has been established for a taxable property, the valuation cannot be changed unless the change is the result of a countywide reassessment. "Spot reassessment," or selective reassessment, is the "reassessment of a property or properties that are not conducted as part of countywide revised reassessment and which creates, sustains or increases disproportionately among the properties' assessed

value." 72 P.S. § 5342.1, Radecke v. York County Board of Assessment, 798 A.2d 265, 267 (Pa.Cmwlth. 2002). However, assessors may change the assessed valuation on real property when improvements are made. 72 P.S. § 5347.1.

Butch's contention is that the reassessment on the improvements should have occurred in 1998, when the residence was first completed. When the Property was finally reassessed in 2005, the reassessment was untimely, and constituted a spot assessment. Butch cites Radecke, supra, for the proposition that "a change in assessment must come when the improvements are made and not at an arbitrary time in the future." 798 at 268.

The Radecke holding is distinguishable. In Radecke, the improvements in question were made prior to a countywide reassessment conducted in 1996. For whatever reason, the improvements were not considered in the reassessment. Subsequently, after Mr. Radecke purchased the property, a county appraiser inspected the property and discovered the improvements, eventually seeking an increased assessment. The failure of the York County Assessment Office to consider the property in determining valuation at the time of reassessment is not the type of error that can be revisited because it would constitute a spot assessment.

In contrast, in the within matter, there was no countywide reassessment or any other action taken by the Assessment Office from the time the residence was constructed until the action taken in 2005. As such, the improvements were never considered in the valuation of the Property. The fact that the County

Assessment Office did not act prior to 2005 does not preclude them from doing so now. Apparently, the Assessment Office had no knowledge of the improvements because it had never received a copy of the building permit issued for the construction and was never notified by the Township, Butch, nor anyone else.

Neither the General County Assessment Law, nor the law specifically dealing with Counties of the Second Class A and Third Class, impose a Statute of Limitations on reassessment arising from the construction of improvements to real property. Butch appears to argue to the contrary, citing 72 P.S. § 5020-205(b), which states that property "shall not be valued or assessed for purposes of real property taxes until (1) occupied, (2) conveyed to a bona fide purchaser, or (3) thirty (30) months from the first day of the month after which the building permit was issued or, if no building permit or other notified improvement was required, then from the date construction commenced." However, this provision simply states that new residential construction is not ripe for assessment until the occurrence of one of the enumerated triggering events. It does not address limiting the time a taxing body has to act on reassessment after an improvement has been made.

In the alternative, Butch argues that the action taken by the Board in voiding the reassessments for 2002, 2003 and 2004 prohibit the Board from reassessing the Property for 2005 on the basis of collateral estoppel. In his brief, Butch correctly cites the test for collateral estoppel provided in Office of

Disciplinary Counsel v. Kiesewetter, 889 A.2d 47, 50-51 (Pa. 2005). In Kiesewetter, the Pennsylvania Supreme Court states:

> The doctrine of collateral estoppel precludes relitigation of an issue determined in a previous action if: (1) the issue decided in the prior case is identical to the one presented in the later action; (2) there was a final adjudication on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding; and (5) the determination in the prior proceeding was essential to the judgment. *Duffield*, 644 A.2d at 1189. Collateral estoppel relieves parties of the cost and vexation of multiple lawsuits, conserves judicial resources, and, by preventing inconsistent decisions, encourages reliance on adjudication. *Shaffer v. Smith*, 543 Pa. 526, 673 A.2d 872, 875 (1996), citing *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 415, 66 L.Ed.2d 308 (1980).

Collateral estoppel does not apply because there has been no final adjudication on the merits. The reassessments for 2002, 2003 and 2004 were withdrawn by the Assessment Office in accordance with its policy not to penalize property owners who did nothing to conceal the increased value of the property. The reassessment for these three (3) years were never submitted to the Board or to the Court for adjudication. Accordingly, no determination was ever made whether the Property could have been reassessed for 2002, 2003 or 2004.

This Court holds that the Property was properly reassessed, that the reassessment did not constitute a spot assessment, and that the doctrine of collateral estoppel was inapplicable. Accordingly, the Board's ruling was proper.

We enter the following Order:

ANTHONY F. BUTCH, Appellant v. BERKS COUNTY BOARD OF ASSESSMENT APPEALS, Appellee and BRANDYWINE HEIGHTS AREA SCHOOL DISTRICT, Intervenor	:	IN THE COURT OF COMMON PLEAS OF BERKS COUNTY PENNSYLVANIA CIVIL ACTION - LAW No. 06-2702 REAL ESTATE TAX ASSESSMENT APPEAL

ORDER

AND NOW, this 30th day of August 2006, upon consideration of the appeal of Anthony R. Butch for determination that the action of the Berks County Board of Assessment Appeals constituted spot assessment or that the action of the Board was improper on the basis of collateral estoppel, and after trial held, this Court finds that the reassessment conducted by the Board for January 1, 2005 for county/township and July 1, 2005 for school was proper.

A status conference is scheduled on the issue of valuation for October 10, 2006 at 9:30 a.m.

BY THE COURT:

Scott E. Lash, J.

ANTHONY F. BUTCH, Appellant v. BERKS COUNTY BOARD OF ASSESSMENT APPEALS, Appellee and BRANDYWINE HEIGHTS AREA SCHOOL DISTRICT, Intervenor	:	IN THE COURT OF COMMON PLEAS OF BERKS COUNTY PENNSYLVANIA CIVIL ACTION - LAW No. 06-2702 REAL ESTATE TAX ASSESSMENT APPEAL

Catherine Beller Meinhart, Esquire, attorney for Appellant, Anthony F. Butch

Edwin L. Stock, Esquire, attorney for Appellee, Berks County Board of Assessment Appeals

Intervenor, Brandywine Heights Area School District, did not participate

DECISION AND ORDER, Scott E. Lash, J. November 9, 2007

The Appellant, Anthony F. Butch (hereinafter "Taxpayer"), has appealed from the Decision of the Board of Assessment Appeals of Berks County (hereinafter "Board") assessing real estate owned by Taxpayer in the amount of Three Hundred Seventy-Seven Thousand Seven Hundred Dollars ($377,700.00). Trial was held on November 7, 2007, at which time, this Court considered the issue of valuation and a uniformity challenge raised by Taxpayer. The trial represents the second portion of bifurcated proceedings, this Court previously holding a trial to determine

whether a spot assessment took place or whether the Board's actions in reassessing Taxpayer's property was improper on the basis of collateral estoppel. By Decision and Order published August 30, 2006, this Court found that the reassessment conducted by the Board for January 1, 2005 for county/township and July 1, 2005 for school was proper.

Regarding the within issues, the Court enters the following Findings of Fact:

I. FINDINGS OF FACT

1. The Appellant, Anthony F. Butch (hereinafter "Taxpayer"), is an adult individual who resides at 555 Locust Street, Mertztown, Longswamp Township, Berks County, Pennsylvania 19539.

2. The Berks County Board of Assessment Appeals (hereinafter "Board") is located at the Berks County Services Center, Third Floor, 633 Court Street, Reading, Berks County, Pennsylvania 19601.

3. Intervenor, Brandywine Height Area School District, is a school district with a principal office at 103 Old Topton Road, Mertztown, Longswamp Township, Berks County, Pennsylvania. Brandywine Heights Area School District filed its Notice of Intervention on May 18, 2006.

4. Taxpayer is the record owner of a property of approximately 1.15 acres located at 555 Locust Street, Mertztown, Longswamp Township, Berks County, Pennsylvania (hereinafter "Property").

5. The Property is located in the Brandywine Heights School District.

6. The Property is identified by the Berks County Assessment Office by Pin Number 59-5473-18-20-8377.

7. Butch purchased the Property on August 31, 1995. At that time, the Property was unimproved.

8. In September 1995, Taxpayer began constructing a residence on the Property. Eventually on April 13, 1998, Taxpayer began occupying the Property.

9. The purchase price for the unimproved lot was Thirty-Four Thousand Dollars ($34,000.00).

10. Taxpayer was the general contractor for the home on the Property. He incurred costs totaling Eighty-Seven Thousand Eight Hundred Nineteen Dollars ($87,819.00), representing payment for materials and subcontractors assisting Taxpayer in the construction.

11. Recently, over a three (3) year period, Taxpayer attempted to sell the Property, listing the property with a realtor. The original asking price was Four Hundred Twenty-Five Thousand Dollars ($425,000.00) but was reduced several times, with the asking price as of September 2006 being Three Hundred Fifty-Nine Thousand Nine Hundred Dollars ($359,900.00). Taxpayer did not receive any offers and ultimately removed the Property from the market.

12. By notices mailed on August 23, 2005, the Assessment Office notified Taxpayer of the imposition of a new assessment for the Property, based upon the improvements, at Three Hundred

Seventy-Seven Thousand Seven Hundred Dollars ($377,700.00). The explanation provided in the notice was "added dwelling." Notices were sent for tax years 2002, 2003, 2004 and 2005.

13. Taxpayer appealed these determinations and the matters were scheduled for a hearing.

14. On February 27, 2006, a hearing was held before the Board. On March 8, 2006, the Board issued a final notice to Taxpayer setting forth that the assessment on the Property would remain at Three Hundred Seventy-Seven Thousand Seven Hundred Dollars ($377,700.00), effective January 1, 2005 for county and township and July 1, 2005 for school.

15. The within appeal requires assessments for tax years 2005, 2006, 2007 and 2008. For all four (4) tax years, Berks County's predetermined ratio is 100%. The common level ratio for 2005 was 86.3%, for 2006 was 80.0%, for 2007 was 75.0% and for 2008 is 68.1%.

16. The Opinion and Order entered by this Court on August 30, 2006 is incorporated herein by reference and made a part of this Decision.

II. DISCUSSION

As stated, Taxpayer raises a uniformity challenge, asserting that he is paying more than his proportionate share of property taxes. In support, he relies on a comparison of the assessment of his Property to sale prices of five (5) comparable properties cited by the Board's appraiser, Thomas J. Bellairs, GRI GAA RAA.

The following information was provided on the five (5) comparable properties, all of which are located in the Brandywine Area School District. The first property, 335 Deer Run Road, District Township, is approximately eight (8) years old and sold on March 6, 2006 for Two Hundred Sixty-Five Thousand Dollars ($265,000.00) and has an assessment of One Hundred Seven Thousand Seven Hundred Dollars ($107,700.00). The second property is located at 31 Highland Drive, Rockland Township, which was constructed 16 years ago and sold on August 24, 2006 for Two Hundred Seventy-Two Thousand Nine Hundred Dollars ($272,900.00). The assessment is One Hundred Thirty Thousand Two Hundred Dollars ($130,200.00). The third property is located at 68 Greiss Street, Longswamp Township, and is a four (4) year old property selling on September 30, 2005 for Two Hundred Ninety Thousand Dollars ($290,000.00) and is assessed at Two Hundred Thirty-One Thousand Dollars ($231,000.00). The fourth property is located at 19 Apple Lane, Rockland Township, and is an eight (8) year old property, sold on October 29, 2005 for Three Hundred Ten Thousand Dollars ($310,000.00) and is assessed at One Hundred Fifty-One Thousand One Hundred Dollars ($151,100.00). The final property is located at 27 High View Lane, Rockland Township, a thirteen (13) year old property selling on August 7, 2006 for Three Hundred Thirty Thousand Dollars ($330,000.00) with an assessment of One Hundred Forty Thousand Three Hundred Dollars ($140,300.00).

In the case of Hromisin v. Board of Assessment Appeals, 719 A.2d 815, 818 (Pa.Cmwlth. 1998), the Commonwealth Court provides

a comprehensive statement of the law regarding uniformity, setting forth:

> A common level of assessment is required by Article VIII, Section 1 of the Pennsylvania Constitution, which states that, 'all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax ...' Our courts have interpreted the uniformity requirement as, 'the principle that a taxpayer should pay no more or no less than his proportionate share of the cost of government.' *Deitch Company v. Board of Property Assessment*, 417 Pa. 213, 220, 209 A.2d 397, 401 (1965).
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> An assessment of a parcel of property is calculated using two factors: (1) fair market value and (2) a ratio or percentage which, when applied to fair market value, yields the assessed value upon which property taxes are based. This court noted in *Appeal of Armco, Inc.*, 100 Pa.Cmwlth. 452, 515 A.2d 326 (1986), *allocatur denied,* 516 Pa. 643, 533 A.2d 714 (1987) that:
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> > [T]he constitutional mandate requiring uniformity is met where the taxing authority assesses all property at the same percentage of its actual value; application of such a uniform ratio assures each taxpayer will be held responsible for its pro rata share of the burden of local government.
>
> *Id.* at 329. Obviously, however, perfect uniformity is not possible since property values fluctuate continuously, and far more frequently than taxing authorities could conceivably perform county-wide reassessments. Thus we look to the 'common level' within the taxing district as the constitutional standard against which the county's applied, or predetermined ratio must be measured. Put another way, the 'common level' or average ratio may be said to represent each taxpayer's fair or proportionate share of the tax burden, and our constitution requires no more than that this share not be materially exceeded. *Deitch*, 417 Pa. at 219-20, 209 A.2d at 401.
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> Traditionally, our courts determined the common level ratio by expert testimony consisting of statistical analysis. *See e.g., Massachusetts Mutual Life Ins. Co. Tax Assessment Case*, 426 Pa. 566, 569, 235 A.2d 790, 791 (1967); *Westinghouse Elec. Corp. v. Board of Assessment, 539 Pa. 453, 458, 652 A.2d 1306, 1313 (1995).* [Footnote omitted]. However, in 1982 our

> legislature amended the Assessment Law, and in so doing established a mechanism which both enforces this minimum constitutional level of uniformity, and obviates the necessity for taxpayers to resort to expensive expert analyses in order to maintain a uniformity challenge. The General County Assessment Law now defines the common level ratio, as 'the ratio of assessed value to current market value used generally in the county as last determined by the State Tax Equalization Board pursuant to the act of June 27, 1947, P.L. 1046, No. 447, referred to as the State Tax Equalization Board Law.' Section 102 of the Act of May 22, 1933, P.L. 853, *as amended*, 72 P.S. § 5020-102. The State Tax Equalization Board Law,[8] mandates the STEB Board to calculate the average common level ratio of assessed to actual market value for each county on an annual basis, using data from all arms' length sales transactions during the relevant period, supplemented by independent appraisal data and other relevant information. [Footnote omitted].
>
> [8] 72 P.S. §§ 4656.1-4656-17.

We note, however, that the amendment to the State Tax Equalization Board Law does not foreclose an appropriate inquiry through the common law procedures for asserting a uniformity challenge. Downingtown Area School District v. Chester County Board of Assessment Appeals, 913 A.2d 194, 205 (Pa. 2006). Under the holdings of Deitch, supra, and In re Brooks Building, 391 Pa. 94, 137 A.2d 273 (1958), a taxpayer may still prove non-uniformity by presenting evidence of the assessment to value ratio of "similar properties of the same nature in the neighborhood." As stated by the Supreme Court in Downingtown:

> ...In *Deitch*, the Court acknowledged that all properties in the relevant taxing district are comparable properties for purposes of calculating the appropriate ratio of assessed value to market value (as all real estate is a class which is entitled to uniform treatment). *Accord Keebler*, 496 Pa. at 142, 436 A.2d at 584. The Court observed, however, that, in the context of a uniformity challenge, the parties

> and the trial court may rely upon evidence concerning the assessment-to-value ratio of similar properties, as was done in *Brooks Bldg.*, *see Deitch*, 417 Pa. at 223, 209 A.2d at 402-03; *see also Brooks Bldg.*, 391 Pa. at 99, 137 A.2d at 275 (stating that 'the tax must be applied with uniformity upon similar kinds of business or property'), because such 'similar properties' evidence, while not comprehensive, is nonetheless relevant to the uniformity analysis; further, it would be a practical impossibility to require the taxpayer to evaluate the assessment-to-value ratio of every parcel in the taxing district. *See Keebler*, 496 Pa. at 143, 436 A.2d at 584; *Harleigh*, 299 Pa. at 390, 149 A. at 655....This led to a situation in which courts determined the CLR by expert testimony, which ordinarily consisted of statistical analyses. In such cases, where a property owner was able to demonstrate that the parcel in question was assessed at a percentage of value exceeding the percentage applied generally throughout the taxing district, the property owner was entitled to a reduction in the assessment in conformance with the generally applied percentage. *See Keebler*, 496 Pa. at 142-43, 436 A.2d at 584; *Deitch*, 417 Pa. at 220, 209 A.2d at 401; McKnight, 417 Pa. at 239, 209 A.2d at 391-92; *Brooks Bldg.*, 391 Pa. at 101, 137 A.2d at 276; *Harleigh*, 229 Pa. at 388, 149 A. at 654. Indeed, this is of the essence of equalization, and thus, uniformity. *See Woolworth*, 426 Pa. at 587, 235 A.2d at 795 (stating that 'uniformity has at its heart the equalization of the ratio among all properties in the district').

913 A.2d at 199-200.

Thus, while equalization is generally achieved through the STEB Board's calculations of common level ratio, the law still permits a taxpayer to establish non-uniformity through comparison of assessment to value ratio of similar properties. Further, the law does not require that all properties in the taxing district be included within the analysis. However, for a taxpayer to establish that he is paying more than his fair share of property taxes, he would have to provide a representative survey utilizing an ample number of properties to enable the

court to determine whether the taxpayer's assessment is non-uniform.

Taxpayer's analysis falls far short of this requirement. As stated, he is relying on a mere five (5) properties. Five (5) properties, chosen for the separate purpose of providing market data analysis to obtain an opinion on fair market value, is hardly representative on what Berks County property owners are being assessed on their real estate. Establishing a common level requires a much greater sampling.[1] Accordingly, Taxpayer has failed to meet his burden on the uniformity challenge.

Based on the holding in Downingtown, however, which also attacked the validity of the application of the established predetermined ratio (EPR), we will decline to apply EPR to tax year 2005, utilizing instead the common level ratio of 86.3%.[2]

Turning next to the valuation issue, we note that actual or market value is defined as "the price which a purchaser, willing but not obligated to buy, would pay an owner, willing but not obligated to sell, taking into consideration all issues to which the property is adopted and might in reason be applied." F & M Schaeffer Brewing Company v. Lehigh County Board of Appeals, 610 A.2d 1, 3, 530 Pa. 451, 457 (1992). Fair market value is fixed by the opinions of competent witnesses as to what the property

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[1] Moreover, one (1) of these properties, at 68 Greiss Street, Longswamp Township, has a fair market value of Two Hundred Ninety Thousand Dollars ($290,000.00) and an assessment of Two Hundred Thirty-One Thousand Dollars ($231,000.00), which as will be seen in our analysis on valuation, represents a lower fair market value but a higher assessment than the subject Property, contradicting Taxpayer's position.

[2] For 2005, the Board sought application of the EPR pursuant to 72 P.S. § 5349(d.2), which requires application of the EPR to value unless the common level ratio published by the State Tax Equalization Board varies by more than 15% from the established predetermined ratio.

is worth on the market at a fair sale. Buhl Foundation v. Board of Property Assessment, Appeals and Review of Allegheny County, 180 A.2d 900, 902, 407 Pa. 567, 570 (1962).

Taxpayer presented no expert testimony on the value of his Property, relying on his own opinion to meet his burden of proof. He testified that he believed a fair price for the Property was his out-of-pocket costs of One Hundred Twenty-One Thousand Eight Hundred Nineteen Dollars ($121,819.00), representing the price of the unimproved lot and construction costs.

Taxpayer's position has no credibility. His out-of-pocket costs were incurred during the period of roughly 1995 through 1998. He made no adjustments to reflect current value. Secondly, he failed to take into account the savings he experienced by his ability to act as the general contractor.

In utilizing a "cost" approach to property valuation, the party offering the opinion must 1) estimate the value of the land assumed vacant and available for its highest and best use, 2) estimate the reproduction costs or "costs new" of the improvement, such as the house, 3) subtract from the reproduction costs the home's depreciation, and 4) add to the depreciated balance the value of the land. Reichard-Coulston, Inc. v. Revenue Appeals Board, 517 A.2d 1372, 1374 (Pa.Cmwlth. 1986).

Even assuming, for the sake of argument, that the lot as unimproved would not have changed in value over a twelve (12) year period, Taxpayer, nevertheless, failed to establish what

the house would cost to construct today, totally disregarding today's market prices or the necessity of including the cost for a general contractor.

We also note that when Taxpayer attempted to sell the Property, his asking price was significantly higher than the One Hundred Twenty-One Thousand Eight Hundred Dollars ($121,800.00) he urges the Court to accept as a fair value. The original asking price of Four Hundred Twenty-Five Thousand Dollars ($425,000.00) exceeds even the assessment value set by the Board. His latest proposed sale price of Three Hundred Fifty-Nine Thousand Nine Hundred Dollars ($359,900.00) exceeds the price opined by the Board's expert. We find Taxpayer's opinion to be disingenuous, lacking any merit whatsoever.

As stated, the Board presented the testimony of an expert appraiser, Thomas J. Bellairs, GRI GAA RAA, who opined that the Property was worth Three Hundred Thousand Dollars ($300,000.00) at all relevant times. He based his opinion on the market approach, utilizing five (5) comparables, all located in the Brandywine Area School District. He did not utilize the income approach, as the Property is a residential property. He also did not utilize the cost approach, finding it to be less reliable for this type of property.

We accept the Board's appraisal as properly representative of fair market value. The comparables utilized appear to approximate the characteristics of the subject Property. Importantly, Taxpayer, himself, relies on the appropriateness of the choice of comparables in his uniformity challenge. As the

Board's appraisal is the only competent evidence presented in support of fair market value, this Court shall accept the value of Three Hundred Thousand Dollars ($300,000.00) for fair market value for the years 2005, 2006, 2007 and 2008. We shall apply the common level ratios to each year and enter the following Order:

ANTHONY F. BUTCH, Appellant v. BERKS COUNTY BOARD OF ASSESSMENT APPEALS, Appellee and BRANDYWINE HEIGHTS AREA SCHOOL DISTRICT, Intervenor	:	IN THE COURT OF COMMON PLEAS OF BERKS COUNTY PENNSYLVANIA CIVIL ACTION - LAW No. 06-2702 REAL ESTATE TAX ASSESSMENT APPEAL

ORDER

AND NOW, this 9th day of November 2007, upon consideration of the within appeal, and after a *de novo* trial held, it is ORDERED that the actual market value of the Property owned by Appellant, Anthony F. Butch, and situate in the Brandywine Heights School District, Berks County, Pennsylvania, Pin No. 59-5473-18-20-8377, for tax years 2005, 2006, 2007 and 2008 is Three Hundred Thousand Dollars ($300,000.00), that the common level ratios of 86.3% for 2005, 80.0% for 2006, 75.0% for 2007, and 68.1% for 2008 shall be applied to the fair market value, resulting in the following values:

For tax year beginning January 1, 2005 for county and township taxes and beginning July 1, 2005 for school district taxes, the lawful assessment is Two Hundred Fifty-Eight Thousand Nine Hundred Dollars ($258,900.00), for tax year beginning January 1, 2006 for county and township taxes and beginning July 1, 2006 for school district taxes, the lawful assessment is Two

Hundred Forty Thousand Dollars ($240,000.00), for the tax year beginning January 1, 2007 for county and township taxes and beginning July 1, 2007 for school district taxes, the lawful assessment is Two Hundred Twenty-Five Thousand Dollars ($225,000.00), and for the tax year beginning January 1, 2008 for county and township taxes and beginning July 1, 2008 for school district taxes, the lawful assessment is Two Hundred Four Thousand Three Hundred Dollars ($204,300.00). The uniformity challenge of Appellant, Anthony F. Butch, is hereby DENIED.

BY THE COURT:

Scott E. Lash, J.