IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMES C. CLIFTON, CHARLES and LORRIE CRANOR, husband and wife, and ROY SIMMONS and MARY LISA MEIER, husband and wife,

Plaintiffs,

v.

ALLEGHENY COUNTY,

Defendant.

KENNETH PIERCE and STEPHANIE BEECHAUM,

Plaintiffs,

v.

ALLEGHENY COUNTY, PENNSYLVANIA, DANIEL ONORATO, its Chief Executive Officer, and DEBORAH BUNN, its Chief Assessment Officer,

Defendants,

v.

THE TOWNSHIP OF UPPER ST. CLAIR and THE UPPER ST. CLAIR SCHOOL DISTRICT,

Intervenors.

CIVIL DIVISION

Nos. G.D. 05-028638

G.D. 05-028355

POST-TRIAL BRIEF OF CLIFTON PLAINTIFFS

Filed on behalf of: JAMES C. CLIFTON, CHARLES and LORRIE CRANOR, husband and wife, and ROY SIMMONS and MARY LISA MEIER, husband and wife

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AND NOW, come Plaintiffs, JAMES C. CLIFTON and CHARLES and LORRIE CRANOR, husband and wife, by and through their attorneys, Ira Weiss, Esquire, M. Janet Burkardt, Esquire, Robert Max Junker, Esquire and the Law Offices of Ira Weiss, and files the following Post-Trial Brief.

I. INTRODUCTION

The base year concept of hands-off property assessments, which permits real estate taxes to be based on a base year market value for an indefinite number of years, is neither fair nor uniform in either theory or practice. Rather, it is a "do-nothing" method authorized by the Pennsylvania General Assembly to legalize a county's neglect of its duty to establish and maintain an assessment system. The Legislature has created a way by which county governments can avoid the politically unpopular process of regular reassessments, but this illusory stability comes at the significant cost of uniformity. The resulting system, wherein property values do not change and there is no triggering event for a reassessment, is one

detached from the economic reality of the marketplace. The effect is that those with the most valuable property pay less than their proportional share whereas those with the least valuable property pay more than their proportional share. As a result, the base year statute clearly, palpably and plainly violates the Uniformity Clause of the Pennsylvania Constitution.

The trial in this matter revealed that the Uniformity Clause was swept aside as the General Assembly moved to enshrine the base year in Pennsylvania. A system was erected on the site, which was designed to defy the surrounding environment and remain unchanged for time immemorial despite the people's representatives' protestations to the contrary. Supporting this edifice are two pillars. The first consisting of the Office of Property Assessments where valuations are created and then frozen in granite. The second consisting of the Appeals System with its own rules and tasked with insuring equalization. Yet without the constitutional foundation, this structure has begun to show cracks. People are beginning to question why this system was constructed to shelter those who are already fortunate enough to own the fastest growing property wealth and to turn away those sadly shackled to an anchor that is dragging their fortunes down. One pillar has already been chiseled away by the Pennsylvania Supreme Court's decision in Downingtown Area School District v. Chester County Board of Assessment Appeals, 2006 Pa. Lexis 2514, ___ A.2d ____ (December 27, 2006). This case presents the opportunity to topple the second pillar, and restore uniformity and proportionality to its rightful place.

II. PLAINTIFFS' ARGUMENT

In prior filings, most notably the Brief in Support of Summary Judgment and the Plaintiffs' Joint Trial Brief, the Clifton Plaintiffs set forth and explained the relevant case law in support of their constitutional challenge. To do so again at length would be unnecessarily

repetitive. However, the Clifton Plaintiffs would be remiss if we, like the County, neglected to address the Pennsylvania Supreme Court's most recent pronouncement on the constitutionality of one component of the base year statute, the appeals system. In the Downingtown case, the Supreme Court examined the issue of "whether the prevailing statutory scheme for tax equalization obviates the common law procedure for asserting a challenge under the *Uniformity Clause of the Pennsylvania Constitution*." Downingtown Area Sch. Dist. v. Chester County Bd. of Assess. Appeals, 2006 Pa. Lexis 2514, *1, ___ A.2d ____ (December 27, 2006) (emphasis in original).[1]

Downingtown presented the Supreme Court with the opportunity to confront and overturn the Commonwealth Court's prior indication that the traditional manner of mounting a uniformity challenge on an individual appeal – offering expert testimony to calculate a common level ratio rather than relying on the STEB – was no longer permissible in light of the 1982 amendments to the assessment laws. The five to two majority used this occasion to reflect on the principles expressed in the Uniformity Clause and eventually spring to its ultimate holding that "in allowing use of the EPR rather than the CLR, the General Assembly has, in effect, carved out a class of taxpayers who are subjected to an unfairly high tax burden – namely, those whose assessment is appealed by any taxing district in which the property is located. Because this classification is not based on any legitimate distinction between the targeted and non-targeted properties, it is arbitrary, and thus, unconstitutional." Id. at *27-28. The Supreme Court recognized that the General Assembly could not "automatically satisfy the dictates of the Uniformity Clause" by legislating a statutorily-endorsed appeal system. Id. at *15.

[1] Interestingly, this case makes "the ultimate determination of facial unconstitutionality" of the assessment laws which only allow the use of the STEB's common level ratio when it varies by more than fifteen percent from the predetermined ratio, yet the opinion does not discuss the "heavy burden" that the challengers face or the "legitimate state interests" that the base year supposedly represents. Downingtown, at 30 n.7.

Thus, Downingtown strikes the first blow against the constitutionality of the base year statute. The Supreme Court has recognized that the General Assembly violated the Uniformity Clause by setting an arbitrary fifteen percent threshold. This conclusion may seem familiar, because it was argued by the Clifton Plaintiffs in prior filings (Brief in Support of M.S.J. at 7-8) and by Richard Almy in his expert report (Plaintiffs' Exhibit "7" Report at 12, "The 15 percent tolerance between the PDR and STEB's CLR is excessive in relation to the tolerances of 5 and 10 percent in the IAAO *Standard on Ratio Studies*."). Now that the Supreme Court has recognized the fallacy of the base year appeal system on an individual level, the next logical step is to address the inherent non-uniformity that occurs at a systemic level when a dynamic market is subject to the fiction that is the base year system of property assessments.

In the Supreme Court's discussion of the fundamentals of the Uniformity Clause in Downingtown, one can tease out general principles applicable to the instant matter. Id. at *17-19. For instance, the Court makes the following statement: "Therefore, while the Commonwealth may certainly seek to achieve overall uniformity by attempting to standardize treatment among differently situated property owners, its efforts in this regard do not shield it from the prevailing requirement that similarly situated taxpayers should not be deliberately treated differently by taxing authorities." Id. at 19. Although the Court was referring to the appeal system in this quotation, the principle expressed can be applied to the overall base year system. As the Plaintiff's evidence showed, the General Assembly attempted to standardize treatment throughout a county by allowing a county to adopt a base year system, but a county deliberately treats similarly situated taxpayers differently by choosing to impose the artificial freeze of a base year on existing property. This abstract concept becomes concrete in expert Anthony Barna's comparison graphs of Wilkinsburg versus Versailles. (Plaintiffs' Exhibit "5") If the base year is set in 1996 when the median sales price in both neighborhoods was $32,500,

the County is deliberately treating these taxpayers differently because the County is consciously ignoring market changes that operate to allow the Versailles property to be under-assessed as time goes on, while allowing the Wilkinsburg property to be over-assessed. By choosing a base year system, the County is deliberately taking a hands-off approach, ignoring the realities of the marketplace, and entrenching non-uniformity.

Mr. Barna's testimony also illustrated a second principle of the Uniformity Clause. The Pennsylvania Supreme Court has construed "the uniformity provision of the Constitution of Pennsylvania to require that taxes 'must be applied with uniformity upon similar kinds of business or property and with substantial equality of the tax burden to all members of the same class.'" Deitch Co. v. Bd. of Prop. Assess., 417 Pa. 213, 218, 209 A.2d 397, 400 (1965)(quoting Brooks Bldg. Tax Assess. Case, 391 Pa. 94, 99, 137 A.2d 273, 275 (1958)). After reciting several tax assessment cases, the Court continued:

> From these previous decisions there emerges the principle that a taxpayer should pay no more or no less than his **proportionate** share of the cost of government. Implementation of this principle would require that an owner's assessment be reduced so as to conform with the common level of assessment in the taxing district.

Deitch, 417 Pa. at 220, 209 A.2d at 401 (emphasis added). Mr. Barna's testimony and evidence about market trends revealed that this proportionality principle is violated by the base year system.

It cannot be argued, and notably the County does not even attempt to, that the base year system meets this principle of proportionality.[2] For instance, just look at the City of Pittsburgh. Consider the median houses in the South Side with 10.3% annual appreciation, Beechview with 2.4% annual appreciation, and Beltzhoover with -14.0% annual depreciation.

[2] In fact, the County holds the base year as sacrosanct even in the face of blatant disproportionality. Daugherty v. County of Allegheny, GD 06-013464 (Ct. Com. Pls. Sept. 5, 2006), appeal docketed, No. 1777 CD 2006 (Pa. Commw. Ct. Sept. 13, 2006) (wherein the County argued that a property owner cannot challenge a base year assessment that was two times the recent sale price).

(Exhibit "5" Pittsburgh Tab; Tr. p. 37) Clearly, it is impossible for the owners of these properties to be paying "no more or no less than their proportionate share of the cost of government" with such a wild fluctuation of current market values when their base year market values remain static. As Mr. Barna explained, this disparity is guaranteed under a base year system because properties change in value at a non-uniform rate and it is impossible to predict the timing of distinct upward and downward moves. (Tr. p. 31) The base year also cannot account for market changes by simply applying an inflationary increase across the county. (Tr. p. 32) The only way to capture market changes and insure that the proportionality principle is met is to regularly update the valuation system that is in place. (Tr. p. 31) As Pennsylvania's assessment legislation permits real estate taxes to be based on a base year market value for an indefinite number of years, this "system will result in unfair valuations" (Tr. p. 39) in direct violation of the Uniformity Clause.

In concert with Mr. Barna's testimony of the trends occurring in the Western Pennsylvania real estate market, Richard Almy presented uncontradicted testimony attacking the theoretical underpinnings of the base year system. Mr. Almy testified, "in looking at a base-year assessment system as one possible model or alternative to a current market value system, for this system to produce fairness in taxation, you would have to assume that every property appreciated or depreciated at the same rate." (Tr. p. 77) However, as Mr. Barna's report of actual conditions in the real estate market revealed, this assumption is proven to be baseless. With the fundamental assumption of the base year invalidated, its utility is severely compromised.

Mr. Almy also discussed the fundamental failings of a base year system. He looked at how the base year is supposed to operate, which was later confirmed by Chief Assessor Bunn's testimony, and reported:

> Studies have shown that infrequent reassessments adversely affect assessment uniformity. [citation omitted] Assessment systems, like an indefinite base-year assessment scheme, under which changes are made only to reflect events like new construction and that rely on out-of-date appraisal information cannot consistently and reliably capture any changes in value that occur after the appraisal base date. [citation omitted] Consequently, uniform taxation cannot be maintained.

(Plaintiffs' Exhibit "6" Report at 1) The assessment system described by Mr. Almy is precisely the assessment system currently existing in Allegheny County and throughout Pennsylvania.

Finally, it should be noted that the IAAO's Standard on Property Tax Policy, while criticizing non-market value systems, refers to base year systems as "frozen." (Plaintiffs' Exhibit "6" Standard on Property Tax Policy at 14) Mr. Almy expanded on this by stating, "what the – a base-year system does is freeze into place average prices per square foot or the amount you would attribute to having a swimming pool or something like that. And as time goes on, as either preferences and [sic] property types go along or there's gentrification or redevelopment, new market factors come into play that the base-year formulas cannot deal with fundamentally or deal with in a fair way." (Tr. p. 137) This testimony encapsulates the Plaintiffs' primary criticisms of the base year system; it freezes existing property values despite clear evidence of appreciation or depreciation, and it cannot reliably translate the actual value of new construction into the base year value because the overall market is constantly changing.

In the Plaintiffs' case in chief, this Honorable Court was presented with complementing expert testimony that exposed Pennsylvania's base year system for the freeze that it is.

III. COUNTY'S BRIEF AND WITNESSES

A. The County's Post-Trial Brief

The County filed its post-trial brief on January 22, 2007. The political polemic in the County's submission is nothing more than that. The bald allegations constitute rhetoric

unsupported by any fact or evidence in the record. Despite having an opportunity to do so, the County chose to present absolutely no evidence to refute the facts and testimony presented by Plaintiffs' experts. Rather, it has chosen to submit a political screed to the Court; no substitute for evidence and legal argument to support it. There is a saying that goes, "If you have the facts on your side, pound the facts. If you have the law on your side, pound the law. If you have neither on your side, pound the table." The County's Brief is the written equivalent of pounding on the table.

Far from being a "cottage industry" for taxpayer challenges, the sad saga of the Allegheny County assessment system is the story of the complete failure of County government to fulfill its primary role in setting the basis for property taxes, and the blame for the continuing fiasco should be laid squarely at the politicians' feet. The County froze assessments and fired all assessors, spent millions on a computer based assessment system, interfered with the duties of the Chief Assessor by not allowing her to certify assessed values, proposed a cap system invalidated by this Court in the Sto-Rox case, and generally interfered with and politicized the operation of the assessment system under the guise of implementing a base year. Throughout this sorry history, the County blamed others (This Honorable Court, Sabre Systems, CLT, other neighboring counties, School Districts, municipalities, and now, taxpayers) for its gross mishandling of an essential government function. If, in fact, a local cottage industry has developed in challenging the County's machinations, it is only because Allegheny County officials have proven more than apt at providing the lumber, nails, and building pads for such an industry to take root.

The County begins its Brief by maintaining that the current base year system is uniform and by characterizing the Plaintiffs as advancing the argument that a countywide reassessment is required. (County Brief at 4) Both of these contentions are wrong.

First, the Clifton Plaintiffs take specific issue with the County's spurious claim that the Pennsylvania Supreme Court recently concluded that the "2002 base year is not lacking in uniformity." (County's Brief at 6) This discussion completely fails to cite to Beattie v. Allegheny County, 907 A.2d 519 (Pa. 2006). The Supreme Court's discussion in Beattie in no conceivable way supports the County's argument that its 2002 base year is uniform. Rather, the Court explained that taxpayers may bypass administrative remedies and maintain an equitable class action in the trial court to assert a Uniformity Clause-based challenge to the real estate assessment system used by Allegheny County in 2002. Beattie, 907 at 529. The merits of the Beattie plaintiffs' claims of non-uniformity were not reached.

The Supreme Court in Beattie also countered the County's argument (which is revisited in its post-trial Brief) that the recency of the 2002 countywide assessment immunizes it from any constitutional attack by stating: "While all this may be true, it does not disprove that an equally non-uniform assessment picture may result from a recently-completed county-wide mass reappraisal if the system used to implement the reappraisal contains certain defects." Id. at 528. This statement negates the bulk of the County's argument concerning the Millcreek Township and the earlier Beattie case. (County Brief at 4-6). In the end, the Supreme Court affirmed the Court of Common Pleas' dismissal for insufficient specificity in the plaintiffs' complaint, explaining that "absent more specific allegations as to how and/or why the techniques used were faulty, and the particular manner in which the County should correct the perceived inequalities, the court was in essence – and improperly – being asked to 'assume responsibility for the operation of the assessment system' that was otherwise the exclusive responsibility of the local agency." Beattie, 907 at 530-531. So although the case was dismissed, the door was opened to equitable challenges to tax assessment systems, such as the instant declaratory judgment action. The County's failure to accurately address the Supreme

Court's decision in Beattie and the misrepresentation of its holding vitiates the County's argument that the 2002 base year is uniform.

Second, although the Clifton Plaintiffs began this lawsuit to challenge the County's decision to torpedo the reassessment already conducted at great expense to the taxpayers, the issue was narrowed by this Honorable Court when the August 29, 2006 Order was entered scheduling the trial on the "as written" challenge. Both the Clifton and the Pierce Plaintiffs used the trial to present evidence that Pennsylvania's indefinite base year legislation is in clear violation of the precepts of the Uniformity Clause. Our experts pointed out the realities of the marketplace as well as the theoretical flaws of the concept, and in doing so, the Plaintiffs most certainly did not elect "to frame their case as one seeking to force a countywide reassessment." (County Brief at 5) To the contrary, the Plaintiffs seek a declaration that the base year statute is unconstitutional. Once that option is off the table, the Plaintiffs express no position on the alternatives that remain.

Along these lines, Mr. Almy testified that although annual reassessments are ideal, a program of regular reassessment is necessary to insure uniformity. He further cited to Section 4.2.3 of the IAAO's Standard on Property Tax Policy, which states: "Non-market value systems should be rejected as a model because they deviate from the basic principle of ad valorem taxation and tend to be less equitable for all property taxes." (Plaintiffs' Exhibit "6") It was not the burden of either Plaintiffs to propose the best practice or to "assume the responsibility for the operation of the assessment system." Rather, Plaintiffs' testimony and exhibits illustrated that the indefinite base year scheme is fundamentally untenable under the constraints imposed by the Uniformity Clause.

The County cannot overcome the simple fact that the base year assessment system written into the law by the General Assembly in 1982 flies in the face of international standards

and the reality of the marketplace. The County's argument in its Brief reveals that it is resigned to the fact that it must defend an indefensible system. By invoking the rational basis test, the County confirms that it recognizes the constitutional violation, yet attempts to excuse it by offering manufactured excuses for treating similarly situated taxpayers differently. The County's analysis is void, however, because it perverts the rational basis test by improperly focusing on the supposed administrative burden placed on the County government rather than focusing on the impact on taxpayers that are affected by the base year legislation. Magazine Publishers of America v. Dep't of Revenue, 539 Pa. 563, 576-77, 654 A.2d 519, 525-26 (1995) (citing Leonard v. Thornburgh, 507 Pa. 317, 489 A.2d 1349 (1985) ("When there exists no legitimate distinction between the classes, and, thus, the tax scheme imposes substantially unequal tax burdens upon persons otherwise similarly situated, the tax is unconstitutional."). The testimony presented at the trial by the County's witnesses confirm that even assuming that the Legislature is permitted to plainly violate the Uniformity Clause, the purported justifications offer no relief to the County.

B. Testimony of retired Representative Charles Nahill

In an attempt to show that the base year concept is constitutional, Allegheny County relied on the testimony of retired Representative Charles Nahill. (Tr. p. 164-177) Pennsylvania Courts have long held that testimony of individual legislators as to their personal recollection of events surrounding the passage of certain legislation is both irrelevant and improper. Philadelphia v. Depuy, 431 Pa. 276, 279, 244 A.2d 741, 743 (1968).

Just like the instant matter, the Depuy case dealt with a constitutional challenge under the Uniformity Clause. There, the challenged statute distinguished between gas and electric companies for the purposes of an annual tax on gross receipts. Depuy, 244 A.2d at 742. The

majority discussed the Appellants' witnesses, including a former State Senator who testified that he believed the legislation was unconstitutional, and concluded: "There can be no doubt that this testimony was both irrelevant and improper." Id. at 743. From the Court's discussion, it does not appear that the opposing party even made an objection to the testimony.

The dissent, although reaching a different conclusion on the constitutionality issue, nonetheless joined in the majority's condemnation of the acceptance of the retired State Senator's testimony. Id. at 743 (Cohen, J., dissenting). The discussion is set forth as follows:

> I do, however, agree with the majority's comment on the legislative witness. Although by this late date one would have been justified in assuming that resort to the legislative debates and the like is an improper evidentiary procedure in passing upon the validity of a Pennsylvania statue, n3 appellants in this case nevertheless refer to the discussions on the floor of the legislature and even put on the witness stand a former member of the State Senate who was personally cognizant of the activities that led to the enactment of the legislation in question. Such evidence is irrelevant and improper and should not have been entertained.
>
> > n3 Statutory Construction Act, Act of May 28, 1937, P.L. 1019, § 51, 46 P.S. § 551. As long ago as Bank of Pennsylvania v. The Commonwealth, 19 Pa. 144 (1852), in an opinion authored by Chief Justice Jeremiah Sullivan Black, the Court unanimously held that in construing an act of the legislature it did not look to what occurred when it was on passage through the legislature. Such evidence is "not only of no value but it was delusive and dangerous." More recently in Martin Estate, 365 Pa. 280, 74 A.2d 120 (1950), Mr. Justice Bell (now Chief Justice) wrote ". . . in ascertaining the legislative meaning while what is said in debate is not relevant, the report of a legislative commission . . . may . . . be considered."

Id. at 744-45 (Cohen, J., dissenting). The clear guidance from the Pennsylvania Supreme Court is that the proffered evidence of retired Representative Charles Nahill was irrelevant.

Although retired Representative Nahill's testimony about the alleged lack of constitutional concerns back in 1982 cannot be considered as relevant evidence on the ultimate issue of whether or not the legislation is constitutional, it nonetheless casts a bright light onto the decision-making process of the Pennsylvania legislature in 1982. His testimony can be

summarized as follows: He was aware that the lack of reassessments were a problem (Tr. p. 168), mass appraisal systems like CAMA were not available (Tr. p. 182), he recognized that Montgomery County had violated the assessment law by not having a reassessment in twenty or thirty years (Tr. p. 168), he joined with the chief assessor of Montgomery County and the State Assessors Association to come up with a "better" system (Tr. p. 168), and their solution was not to require regular reassessments, but rather, to legislatively endorse Montgomery County's violation of the prior assessment law. (Tr. p. 169) Incredibly, instead of addressing the issue of infrequent assessments, the legislature chose to bury its collective head in the sand and endorse the base year freeze of assessments. Legislative cowardice sadly trumped constitutional principles of uniformity in this instance.

C. Testimony of County Manager

The testimony of Allegheny County Manager James Flynn reveals that the county never fully bought into the reassessment system despite its participation in the consent order. (Tr. p. 192) Despite this consent, the county has done nothing but attempt to undermine the reassessment system. This is clear from Mr. Flynn's testimony concerning the county controller's audit of the 2002 assessment.

The County put forth the argument that it was swamped with appeals from the previous reassessments, and the costs of handling those appeals and contracting with Sabre Systems and CLT to conduct the reassessments are the legitimate purpose for its decision to use a base year. (Tr. p. 197) This argument is completely hollow, because it was the County itself that invited property owners to appeal, thus creating the alleged crush of appeals. Although Mr. Flynn referred to the controller's 2002 audit (Tr. p. 207), the County did not offer the document into evidence. Attached hereto, made a part hereof, and labeled Exhibit "A" is a copy of the

controller's report, also available at http://www.county.allegheny.pa.us/controll/rpt03a.pdf. Note that this document once again puts forth the false accusation that this Court ordered the reassessments. (Controller's Report at 2-3) Also, this document contains the following:

> On March 22, 2001, the County Controller's Office released its first report on Sabre's compliance with the terms of its contract with the county. The report revealed that 27% of residential and 30% of commercial neighborhoods in the county were not in compliance with the coefficient of dispersion (COD) limits contained in the contract. **In the report, the Controller recommended** that Sabre correct the mistakes identified in the report and **that the County proactively notify over-assessed property owners and urge them to appeal, as well as ensure that under-assessed properties are adjusted through the formal appeals process**.

(Controller's Report at 3) (emphasis added). Thus, the County is incredulously manufacturing support for the base year system by citing problems of its own invention.

Mr. Flynn also echoes retired Representative Nahill's statement that it is "the intent of the legislature" to leave the decision to the offices of County government to decide when the appropriate time would be to reassess. (Tr. p. 227) He also indicated that he "absolutely" believed that at "some point in the future when the County believes that it's required," the decision will be made to reassess. (Tr. p. 227) Nothing else so succinctly sums up the constitutional violation inherent in the base year system than these statements. They recognize that the base year system allows a County to neglect existing property values for an indefinite number of years, yet there is nothing other than the whim of County officials that can trigger a reassessment. This complete lack of any trigger whatsoever, either in the legislation itself or in the form of a constitutional amendment, is the base year scheme's ultimate undoing.

The rest of Mr. Flynn's testimony can be summarized as showing that Allegheny County had difficulty in reviving the assessment system after years of institutional neglect. (Tr. p. 190-228) Once again, this focus on the administrative difficulties is a perversion of the rational basis test because it does not address why the County should be able to treat similarly situated

taxpayers differently. Nevertheless, the growing pains associated with reviving a once dormant function of local government comes as no surprise. If anything, the capital costs associated with updating and modernizing an assessment system argue for the use of regular reassessments rather than holding a base year steady for an indefinite number of years. The investment has already been made in this case. Either the County can continue to use its capital investment, or it can scrap the system and start from scratch somewhere down the line. Either way, the excuses that it is cost-effective and more politically favorable to freeze assessments can in no way justify the disparity that is inherent in a base year system. See Lancaster v. Lancaster County, 599 A.2d 289 (Pa. Commw. Ct. 1991). Falling back on the tired excuse that other counties already do it is similarly insufficient.

The County Manager's testimony offered no insight into why a County should be able to freeze assessed values when that decision results in and perpetuates non-uniform treatment of taxpayers throughout the county. As such, it should be discounted by this Honorable Court as nothing more than irrelevant political rhetoric.

D. Testimony of Chief Assessment Officer

Deborah Bunn, Chief Assessment Officer for Allegheny County, testified that the assessment office worked in 2004 and 2005 to collect data, analyze sales, build cost tables and market models, which were all used to recalculate current fair market values for the 2006 reassessment. (Tr. p. 264) Preliminary ratio studies were performed that indicated that the values met international standards. (Tr. p. 265) Looking deeper into the data, Ms. Bunn noted that there were variations in some ratio CODs and PRDs that merited further investigation, but that process was halted when the County ordered that no further analysis was to be done and

the County moved to a base year. (Tr. p. 286) Upon finding such errors, it was customary to recalibrate the CAMA system to make modifications to address the inaccuracies. (Tr. p. 288)

Ms. Bunn also testified that her staff in the Office of Property Assessments does work for field data collection for permits, new construction, new subdivisions, new structures, new buildings, both residential and commercial." (Tr. p. 277) Thus, her testimony about how the Office of Property Assessment is operating the base year system falls directly in line with the criticism leveled against the base year by Mr. Almy. (Supra at 6-7) Although sales are being entered into the computer and new construction is being valued, the property values of all existing and unmodified properties are frozen at 2002 levels. Even if a parcel is exploding at 10.3% annual appreciation or crumbling at -14.0% annual depreciation, its base year market value does not budge. The unconstitutionality of such a system is clear, palpable and plain, thereby necessitating judicial review.

IV. CONCLUSION

The time is ripe for Pennsylvania's base year system of property assessments to be declared unconstitutional, and this trial presented the opportune vehicle for just such a pronouncement. The Pennsylvania Supreme Court struck the first blow by declaring the legislative attempt to automatically address the Uniformity Clause in the base year appeals system unconstitutional in Downingtown. The trial in this matter showed that the General Assembly ignored constitutional concerns in 1982 when it condoned the practice of several counties by legitimizing their neglect of their duty to create and maintain assessments systems in conformance with constitutional mandates of uniformity. All counties in Pennsylvania that shun a politically unpopular responsibility by continuing to use a base year system are violating the Pennsylvania Constitution. The IAAO warned in the Standard on Property Tax Policy:

> Furthermore, once such a system becomes entrenched through long-term application, it becomes virtually impossible to eliminate disparities that can only grow worse over time. A return to a system based on market value inevitably would cause major intra-category tax shifts; therefore, the prospect of such reform ceases to be available after a few years of high inflation.

(Plaintiffs' Exhibit "6" Standard on Property Tax Policy at 14) As the most recent convert to the false promise of the base year, Allegheny County is in the prime position to be halted before the base year becomes entrenched and further violence is wrought to our collective understanding of what is "fair."

Respectfully submitted,

By: *Ira Weiss, Esquire*

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By: *Robert M. Junker, Esquire*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the within Post-Trial Brief of Clifton Plaintiffs was served this 6th day of _February_, 2007 by first class mail upon the following:

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