--x		TAX COURT OF NEW JERSEY
JEFFREY B. KILLINO,	:	DOCKET NO. 001021-2013
	:	DOCKET NO. 002453-2013
Plaintiff,	:	DOCKET NO. 002454-2013
	:	
v.	:	Civil Action
	:	
BOROUGH OF AVALON,	:	BLOCK 12.02, LOT 4
	:	
Defendant.	:	MEMORANDUM OPINION
--x		

Decided: November 1, 2016

Jeffrey B. Killino, Esq., a member of the bar of the Commonwealth of Pennsylvania, Self-Represented Party (The Killino Firm, P.C., attorneys)

Thomas G. Smith, Esq., for defendant (The Law Offices of Thomas G. Smith, P.C., attorneys)

/s/ DeALMEIDA, P.J.T.C.

At the conclusion of the trial in the above-referenced matters on October 31, 2016, the court placed its findings of fact and conclusions of law on the record in the presence of counsel. This memorandum opinion amplifies the court's findings of fact and conclusions of law and clarifies the mathematical calculations delivered from the bench, which the court has determined contained a mathematical error. To the extent that any mistaken calculations were delivered from the bench, the written calculations set forth below correct those mistaken calculations and represent the court's findings of fact and conclusions of law.

Plaintiff Jeffrey B. Killino is the owner of real property in defendant Borough of Avalon in Cape May County. The subject property is designated in the records of the municipality as Block 12.02, Lot 4 and is commonly known as 10 W. 12th Street. The property is in a desirable location one block from the beach in an upscale shore community.

Mr. Killino purchased the subject property on March 23, 2011. Shortly after taking title to the property, Mr. Killino arranged for the demolition of the structure that stood on the parcel to make way for the construction of a new home.

At the start of tax year 2012, the subject property was assessed as vacant land for local property tax purposes as follows:

Land	$1,045,000
Improvements	$ 00
Total	$1,045,000

The Chapter 123 common level range for Avalon Borough tax year 2012 is 92.58. The implied equalized assessed value of the subject property at the start of tax year 2012 was $1,128,754 ($1,045,000 ÷ .9258 = $1,128,754).

Mr. Killino caused a new residence to be constructed on the property. The three-story, 3,927-square-foot home was issued a Certificate of Occupancy by the borough in April 2012. Mr. Killino began using the residence shortly after that time.

In November 2012, the municipal tax assessor imposed an added assessment on the subject property arising from the new improvements. The assessor deemed the improvements to have been completed as of the issuance of the Certificate of Occupancy and assessed the value of the improvements at $1,079,800. The implied equalized assessed value of the added assessment is $1,166,343 ($1,079,800 ÷ .9258 = $1,166,343). As provided by N.J.S.A. 54:4-63.3, the added assessment was effective as of May 1, 2012, the first of the month following completion of the improvements. The $1,079,800 added assessment was prorated over the final 8 months of 2012.

For tax year 2013, the subject property was assessed as follows:

Land	$1,045,000
Improvements	$1,079,800
Total	$2,124,800

The Chapter 123 common level range for Avalon Borough tax year 2013 is 94.81. The implied equalized assessed value of the subject property for tax year 2013 was $2,241,114 ($2,124,800 ÷ .9481 = $2,241,114).

On March 11, 2013, Mr. Killino filed a Complaint in this court challenging both the tax year 2012 added assessment and the tax year 2013 assessment. That Complaint was assigned Docket No. 001021-2013.

Because Tax Court rules require that a challenge to the assessment for each tax year be alleged in a separate Complaint, on March 25, 2013, Mr. Killino, at the direction of the Tax Court Management Office, filed two Complaints with this court, one for each assessment year.

The Complaint challenging the tax year 2012 added assessment was assigned Docket No. 002454-2013.

The Complaint challenging the tax year 2013 assessment on the subject property was assigned Docket No. 002453-2013.

The municipality filed a Counterclaim in response to each of the three Complaints.

The October 31, 2016 trial addressed all three Complaints and Counterclaims.

Because the Complaint is the matter assigned Docket No. 001021-2013 is duplicative of the two later-filed Complaints, the court will enter a Judgment dismissing the Complaint assigned Docket No. 001021-2013.

A. Jurisdiction to Review 2012 Added Assessment.

During pretrial proceedings, the court raised the question of whether Mr. Killino had established jurisdiction to review the tax year 2012 added assessment in light of the filing date of the original Complaint. This question was addressed at trial through the submission of testimony and documentary evidence.

This court was established in 1979 for the purpose of adjudicating tax and tax-related matters. See N.J.S.A. 2A:3A-1 (repealed by L. 1993, c. 74, §3, re-codified as N.J.S.A. 2B13-1 to -15); see also Farrell v. City of Atlantic City, 10 N.J. Tax 336, 342-43 (Tax 1989). As our Supreme Court explained, the "Tax Court is vested with limited jurisdiction" defined by statute. McMahon v. City of Newark, 195 N.J. 526, 546 (2008)(citing N.J.S.A. 2B:13-2 and Union City Assocs. v. City of Union City, 115 N.J. 12, 23 (1989)). The statutory scheme establishing this court's jurisdiction is "one with which continuing strict and unerring compliance must be observed . . . ." McMahon, supra, 195 N.J. at 543. The court may exercise only that jurisdiction which the Legislature has conferred to it. DSC of Newark Entrps. v. Borough of South Plainfield, 17 N.J. Tax 510 (1997), aff'd, 17 N.J. Tax 507 (App. Div. 1998). "Failure to file a timely appeal is a fatal jurisdictional defect." F.M.C. Stores v. Borough of Morris Plains, 100 N.J. 418, 425 (1985). This is true even in the absence of harm to the taxing district. Lawrenceville Garden Apartments v. Township of Lawrence, 14 N.J. Tax 285, 288 (App. Div. 1994). This court has jurisdiction to determine its jurisdiction. American Trucking Ass'ns v. State, 324 N.J. Super. 1 (App. Div. 1999), rev'd on other grounds, 180 N.J. 377 (2004).

According to N.J.S.A. 54:4-63.11:

> [A]ppeals from added assessment may be made directly to the Tax Court on or before December 1 of the year of levy,

> or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later, if the aggregate assessed valuation of the property exceeds $750,000.00.

The municipal tax collector produced evidence that a third-party vendor, acting on behalf of the tax collector, issued a bulk mailing of tax bills related to added assessments in November 2012. There was extensive testimony at the trial with respect to whether the vendor mailed a tax bill for the added assessment on the subject property to Mr. Killino and whether any such bill was properly addressed. Ultimately, the court concluded in a bench opinion issued during trial that the municipality did not establish by a preponderance of evidence a presumption of mailing and delivery of a tax bill for the tax year 2012 added assessment to Mr. Killino. See SSI Medical Servs., Inc. v. State, Dep't of Human Servs., 146 N.J. 614, 621 (1996). The court also concluded that even if the municipality had established a presumption of mailing and delivery of a tax bill relating to the tax year 2012 added assessment, Mr. Killino overcame the presumption of delivery through the submission of credible evidence establishing that he did not receive a tax bill relating to the tax year 2012 added assessment. See Southway v. Township of Wyckoff, 20 N.J. Tax 194 (Tax 2002); Davis & Assocs. v. Township of Stafford, 18 N.J. Tax 621 (Tax 2000).

The court also found that a delinquency notice mailed by the municipal tax collector to Mr. Killino in December 2012 as a result of the added assessment did not put Mr. Killino on notice of the added assessment. The court found that the notice merely stated the amount of delinquent taxes, and did not explain that the delinquent taxes were due to an added assessment on the subject property. The court found credible the testimony of a paralegal employed by Mr. Killino that she contacted Borough officials after receipt of the

December 2012 delinquency notice to determine why the 2012 taxes on the subject property had increased and was not provided an explanation.

Nor, the court concluded, did a January 2013 post card mailed to Mr. Killino on behalf of the municipal tax assessor with respect to the tax year 2013 assessment on the subject property put him on notice of the tax year 2012 added assessment because the postcard contained ambiguous information with respect to the tax year 2012 assessment and taxes due with respect to the subject property.

The court concluded that Mr. Killino was put on notice of the tax year 2012 added assessment during a January 2013 telephone conversation with municipal officials. The court also concluded that in light of the holding in Centorino v. Township of Tewksbury, 18 N.J. Tax 303 (Tax 1999), Mr. Killino would be afforded a reasonable time from notice of the tax year 2012 added assessment in which to file a Complaint in this court challenging the assessment. Finally, the court concluded that Mr. Killino acted within a reasonable time when he filed that the March 11, 2013 Complaint challenging the 2012 added assessment.

B. Valuation Claims.

The court's analysis begins with the well-established principle that "[o]riginal assessments . . . are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). As Judge Kuskin explained, our Supreme Court has defined the parameters of the presumption as follows:

> The presumption attaches to the quantum of the tax assessment. Based on this presumption the appealing taxpayer has the burden of proving that the assessment is erroneous. The presumption in favor of the taxing authority can be rebutted only by cogent evidence, a proposition that has long been settled. The strength of the presumption is

> exemplified by the nature of the evidence that is required to overcome it. That evidence must be "definite, positive and certain in quality and quantity to overcome the presumption."

Ibid. (quoting Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985)(citations omitted)). "The presumption of correctness . . . stands, until sufficient competent evidence to the contrary is adduced." Little Egg Harbor Twp. v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998)(citation omitted); Atlantic City v. Ace Gaming, LLC, 23 N.J. Tax 70, 98 (Tax 2006).

Only after the presumption is overcome with sufficient evidence at the close of trial must the court "appraise the testimony, make a determination of true value and fix the assessment." Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38-39 (App. Div. 1982). If the court determines that sufficient evidence to overcome the presumption that the assessment is correct has not been produced, the assessment shall be affirmed and the court need not proceed to making an independent determination of value. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992); Global Terminal & Container Serv. v. City of Jersey City, 15 N.J. Tax 698, 703-04 (App. Div. 1996).

Mr. Killino presented the testimony of an expert witness, a licensed real estate appraiser. The expert offered the opinion that the subject property had a true market value of $1,815,000 as of October 1, 2012, the relevant valuation date for tax year 2013. The municipality did not present an expert witness, relying instead on its cross-examination of Mr. Killino's expert.

The court concluded that the expert testimony, supported by comparable sales of properties similar to the subject and based on adjustments derived from market data and

the expert's knowledge and experience, was sufficient to overcome the presumption of validity attached to the challenged assessments.

With respect to determining the true market value of the subject property, the court accepted the testimony of the expert, but made a few adjustments to his conclusion of value. Relying most heavily on the expert's comparable sale No. 3 (25 W. 17th Street), making an adjustment to the expert's adjusted sales price for his comparable sale No. 1 (1 W. 24th Street), and giving little weight to the expert's comparable sale No. 2 (9 W. 23rd Street), the court concluded that the subject property had a true market value of $1,860,000 as of October 1, 2012. The court also concluded that as May 1, 2012, the first of the month after the completion of the improvements, the subject property had a true market value of $1,860,000.

C. Tax Year 2012 Added Assessment.

"Having . . . found the true value of property" for which there has been an added assessment, "the sole remaining function of the Tax Court [is] to determine, and direct the entry of a judgment fixing, the amount of the added assessment for the tax year . . . pursuant to the formula prescribed therefor in the applicable statute, viz., N.J.S.A. 54:4-63.3." Borough of Fort Lee v. Invesco Holding Corp., 6 N.J. Tax 255, 257 (App. Div.), certif. denied, 94 N.J. 606 (1983). According to the statute, when improvements are completed on property after the October 1st valuation date,

> the assessor shall . . . determine the taxable value of such parcel of real property as of the first of the month following the date of . . . such completion, and . . . if such value so determined exceeds the assessment made as of October 1 preceding, the assessor shall enter an assessment, as an added assessment against such parcel . . . which assessment shall be determined as follows: by multiplying the amount of . . . such excess by the number of whole months remaining

> in the calendar year after the date of . . . such completion, and dividing the result by 12.
>
> [N.J.S.A. 54:4-63.3.]

The court determined that the true market value of the subject property, with the improvements completed, as of May 1, 2012, the first of the month following completion of the improvements, was $1,860,000. The assessed value of the property prior to the improvements for that year was as follows:

Land	$1,045,000
Improvements	$ 0
Total	$1,045,000

As noted above, the Chapter 123 average ratio for Avalon Borough for tax year 2012 was .9258. The implied equalized assessed value of the subject property before completion of the improvements was $1,128,754 ($1,045,000 ÷ .9258 = $1,128,754). The increase in value as a result of the improvements was $731,246 ($1,860,000 - $1,128,754 = $731,246). The taxable value of the added assessment for tax year 2012 is $487,497 ($731,246 x 8 = $5,849,958 ÷ 12 = $487,497). The average ratio for tax year 2013 must be applied to the taxable value of the added assessment, as it would not be appropriate to assess the added value at 100% where a lower average ratio exists for the municipality. The appropriate added assessment, therefore, is $451,325 ($487,497 x .9258 = $451,325). Judgment will be entered accordingly.

D. Tax Year 2013 Assessment.

Pursuant to N.J.S.A. 54:51A-6a, commonly known as Chapter 123, in a non-revaluation year an assessment must be reduced when the ratio of the assessed value of the property to its true value exceeds the upper limit of the common level range. The common

level range is defined by N.J.S.A. 54:1-35a(b) as "that range which is plus or minus 15% of the average ratio" for the municipality in which the subject property is located.

The true market value determined above for tax year 2013 must, therefore, be compared to the average ratio for Avalon Borough for that tax year. The formula for determining the subject property's ratio is:

Assessment ÷ True Value = Ratio

Thus, for tax year 2013, the formula is:

$2,124,800 ÷ $1,860,000 = 1.142

The chapter 123 average ratio for Avalon Borough for tax year 2013 is .9481 with a common level range having an upper limit of 109.03 (presumed to be 100) and a lower limit of .8059. The ratio for the subject property for this tax year is 1.142, which exceeds the upper limit of the common level range for this tax year. Consequently, the court will determine the assessment for the subject property for tax year 2013 by multiplying the true value by the Chapter 123 average ratio:

$1,860,000 x .9481 = $1,763,466

The court will round this number to $1,765,000.

A Judgment establishing the assessment for the subject property for tax year 2013 will be entered as follows:

Land	$1,045,000
Improvement	$ 720,000
Total	$1,765,000

Because the court concluded that the evidence admitted at trial warrants a reduction in the tax year 2012 added assessment and the tax year 2013 assessment, the borough's Counterclaims are dismissed.

E. Freeze Act Relief.

The Freeze Act, N.J.S.A. 54:51A-8, provides in pertinent part as follows:

> Conclusiveness of judgment; changes in value; effect of revaluation program. Where a judgment not subject to further appeal has been rendered by the Tax Court involving real property, the judgment shall be conclusive and binding upon the municipal assessor and the taxing district, parties to the proceeding, for the assessment year and for the 2 assessment years succeeding the assessment year covered by the final judgment, except as to changes in the value of the property occurring after the assessment date. The conclusive and binding effect of the judgment shall terminate with the tax year immediately preceding the year in which a program for a complete revaluation or complete reassessment of all real property within the district has been put into effect. If as of October 1 of the pretax year, the property in question has been the subject of an addition qualifying as an added assessment . . . the conclusive and binding effect of such judgment shall terminate with said pretax year.

The Freeze Act protects taxpayers who have successfully prosecuted a challenge to an assessment on their property from "repeated yearly increases in the assessed value of property, not related to or justified by any changes increasing its market value . . . ." City of Newark v. Fischer, 8 N.J. 191, 199-200 (1951). The statute is self-executing and "[o]nce a tax assessor becomes aware of a judgment freezing the assessment at issue for the next two tax years, 'the mandatory and self-executing nature of the Freeze Act requires the assessor to comply.'" Grandal Entrps., Inc. v. Borough of Keansburg, 292 N.J. Super. 529, 536-37 (App. Div. 1996)(quoting Clearview Gardens Assocs. v. Township of Parsippany-Troy Hills, 196 N.J. Super. 323, 329 (App. Div. 1984)). A taxpayer need not file an appeal for the tax year for which Freeze Act protection is sought. Union Terminal Cold Storage Co. v. Spence, 17 N.J. 162, 167 (1954). Instead, the protection of the Act "may be invoked at the option of the taxpayer on motion for supplementary relief to the Tax Court under the

caption of the Tax Court judgment for the base year to which the Freeze Act application is sought." R. 8:7(d).

At the conclusion of trial, Mr. Killino sought Freeze Act protection for tax years 2014 and 2015. The municipality did not object to Mr. Killino's application. Although the Judgment reducing the assessment for tax year 2013 will be subject to further appeal for 45 days from its entry, the court will include Freeze Act relief for tax years 2014 and 2015 in the Judgment in light of the fact that the municipality did not interpose an objection to Mr. Killino's request for relief.