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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

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JUDGE

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Re: Cobblestone Acquisition, L.L.C. v. Township of Ocean
Docket No. 008001-2016

Dear Counsel:

This opinion addresses defendant's motion to dismiss the above-captioned complaint as being untimely filed. Plaintiff opposed the same, and cross-moved for relief under N.J.S.A. 54:51A-8 ("Freeze Act") based on a judgment for 2015 pursuant to the parties settlement that the assessment be affirmed at $7,650,000, since defendant did not undergo a complete revaluation in 2016. Defendant opposed the cross-motion on grounds the Freeze Act is inapplicable to properties assessed pursuant to the Real Property Assessment Demonstration Program, N.J.S.A 54:1-101 et seq. ("Demonstration Program" or "Demonstration Program Law"), and further that the assessor's method of revising assessments for 2016, including that of plaintiff's property to $10,041,400, equates to a "complete reassessment" barring Freeze Act relief.

For the reasons stated below, and under the facts herein, the court agrees with plaintiff that defendant is in the transitional stage of Monmouth County's schedule implementing the Demonstration Program, which schedule requires there be first a complete or district-wide revaluation by defendant, and annual reassessments or assessment revisions by the assessor thereafter. The court is unpersuaded that the change of assessments to comport to the average ratio for 2016, the method employed by the assessor here, is a "complete reassessment" under the Freeze Act. Since it is undisputed that there was no revaluation in effect for 2016 in defendant taxing district, the court grants plaintiff's cross-motion, which moots defendant's motion to dismiss the complaint and plaintiff's opposition to the same.

FACTS AND PROCEDURAL HISTORY

Plaintiff is owner of property identified as Block 1.05, Lot 6 ("Subject") located in defendant ("Township"). For tax year 2014, the Subject was assessed at $10,421,000. For tax year 2015, it was assessed at $7,650,000. After plaintiff challenged these assessments in the Tax Court, the parties settled the same by reducing the 2014 assessment to $7,650,000 and affirming the 2015 assessment of $7,650,000. Judgements were accordingly entered on December 5, 2014 and May 22, 2015.

In 2013, the Legislature enacted the Demonstration Program Law with the intent of achieving uniformity and cost savings in real property assessments under a collaborative effort of the county tax administrators and the assessors of the municipalities of the county. Monmouth County participated in the Demonstration Program, and established a 5-year Implementation Schedule in this regard. Titled "2015 Annual Reassessment & the Impact on Property Taxes" under the "Monmouth County Assessment Demonstration Program," prepared by the county board in August 2015, the schedule listed all 53 municipalities and their respective assessment functions

for each year starting 2014 and ending 2018, whereby assessments are to be either (1) "revised to market value by assessor," or (2) "revised by assessor to current ratio," or (3) "revised to market value by traditional revaluation," or (4) "revised to current ratio – revaluation pending for future years."[1]

Specific to the Township, the 2014 assessments (Year 1 of the Implementation Schedule) were to be "revised by assessor to current ratio." The 2015 assessments (Year 1 of the Implementation Schedule) were to be "revised to current ratio – revaluation pending for future years," with a notation "2016 Revaluation." The 2016 assessments (Year 3 of the Implementation Schedule) were to be "revised to market value by traditional revaluation," because the Township was ordered to do a complete revaluation effective for tax year 2016. In Year 4 of the Implementation Schedule, the 2017 assessments are to be "revised to market value by Assessor" with a notation "1st year QRA," meaning the first year of a qualified reassessment by the assessor.[2] In Year 5 of the Implementation Schedule, the 2018 assessments are to be "revised to market value by Assessor" with a notation "2nd year QRA."[3]

For tax year 2016, the Subject was assessed at $10,041,400. Plaintiff challenged the same in Tax Court by filing a complaint on April 28, 2016.

On May 11, 2016, the Township moved to dismiss the 2016 complaint as untimely. The motion was supported by the assessor's certification that for 2016, the "Township . . . did not perform a revaluation nor did it perform a reassessment. It was still utilizing the Chapter 123

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[1] The Monmouth County Board of Taxation's website contains a detailed explanation of the Demonstration Program, and includes the 5-year Implementation Schedule. See http://co.monmouth.nj.us/documents (last visited August 10, 2016).

[2] At this point (in 2017), it was expected that no municipalities would require the 2017 assessments to be "revised to current ratio-revaluation pending for future years."

[3] It was expected that no municipalities would require the 2018 assessments to be either "revised to market value by traditional revaluation," or "revised to current ratio-revaluation pending for future years."

average ratio and common level ranges." This averment was endorsed by the "2016 Monmouth County Common Level Range," table of ratios which showed the Township's average ratio at 90.18%, without an "R" indicator reflecting a revaluation or reassessment.

Plaintiff cross-moved for relief seeking application of the Freeze Act based upon the judgment entered for tax year 2015. Plaintiff also opposed the Township's dismissal motion on grounds the Notice of Assessment (replicated from the Monmouth County Board of Taxation's website) violated N.J.S.A. 54:4-38.1(a) because while it had a specified the deadline to file appeals to the County Board, it did not do so for direct appeals, and instead directed taxpayers to a web address "http://www.njcourtonline.com," which per plaintiff is a "non-existent domain."

The Township opposed the cross-motion contending that the Freeze Act was inapplicable because Monmouth County was a participant in the Demonstration Program, and the Township's appraiser had "universally reviewed the entire municipality and made changes to the assessment values where necessary."

ANALYSIS

The Freeze Act protects a taxpayer by "freezing" an assessment for the two years following a tax year for which there is a final judgment of the Tax Court (called the "base year"). N.J.S.A. 54:51A-8. One of the exceptions is where there has been a complete revaluation. The statute provides that "[t]he 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." N.J.S.A. 54:51A-8.

The issue presented here is the meaning of the terms "complete revaluation or complete reassessment of all real property," under the Freeze Act vis-à-vis the language and intent of the Demonstration Program.

As the name and legislative history of the Demonstration Law indicates, the Program is an investigative experiment aimed at cost-cutting, efficiency, and budget savings. See N.J.S.A. 54:1-102 (purpose of law is to achieve a "collaborative system of property assessment" between a county board's administrator and the assessors of the various taxing districts within that county, using a uniform "more precise, technology-driven real property assessment process;" changing the "annual real property assessment calendar" to accommodate the "demands of the municipal budget calendar;" and reducing refunds for "successful property assessment appeals filed annually," thus averting the negative impact upon "the local budget"). The Demonstration Program would "investigate whether systemic changes," such as "revisions to the assessment calendar and the assessment appeal process, will help address the shortcomings of the municipal assessment system . . . through the use of cutting-edge technology under the direction of the county tax board." N.J.S.A. 54:1-102(c). See also N.J.S.A. 54:1-104(a) (Demonstration Program established "to evaluate the efficacy and functionality of" the assessment process "pursuant to a revised assessment, and assessment appeal, calendar").

The Demonstration Program, requires, among others, that there be "a plan developed by the county tax administrator," and approved by certain agencies. N.J.S.A. 54:1-104(c)(2). This plan must "operate under all statutory requirements" applicable to real property assessment but consistent with the Demonstration Program law, including "statutory dates and time frames" as amended. Ibid. Each assessor must use the "same property assessment software" to perform "[a]ll real property assessment functions required [by] State law, including . . . revaluation or reassessment [and] other assessment based functions such as the development of a compliance plan, maintenance of assessments . . . ." N.J.S.A. 54:1-104(e).

Thus, based on the plain language of the statute, and the enunciated purposes, the court does not agree with the Township that because Monmouth County is a participant of the Demonstration Program, it means that the Freeze Act does not apply to any assessment performed by any assessor of any municipality in Monmouth County. The court does not read any explicit or implicit repeal or waiver of the Freeze Act in the Demonstration Program Law.

A review of Monmouth County's 5-year Implementation Schedule also makes it apparent that the Freeze Act is not automatically inapplicable because the County is a participant of the Demonstration Program. Rather, and as plaintiff correctly points out, the County's aim is to first have all properties in each of the 53 municipalities completely revalued. This is apparent by the stages of the implementation, i.e., revising assessments by "traditional revaluation," and thereafter, revising assessments to market value by the assessor or to the current ratio which would (and should) be at 100% due to the initial revaluation. Until the complete revaluation (which was either in the process of being effectuated or was "pending for future years") was undertaken, assessors had to revise the assessments "to current ratio." Thus, each of the 53 municipalities are noted to have either undertaken a revaluation or have been ordered to undertake a revaluation in either 2015, 2016 or 2017. See also N.J.S.A. 54:1-104(f) authorizing a county board to "compel the implementation of a revaluation or reassessment of real property," if and when it deems it necessary, which order was appealable to the Tax Court.[4]

Notably, one of the goals of the Demonstration Program was to be "a complement to the county-based real property assessment system pilot program" under N.J.S.A. 54:1-86 et seq., so that the Legislature could compare "the two different methods," and decide whether "the current

[4] The website notes: "[o]nce we get to the tax year 2018, the Assessors of all 53 towns will be performing annual reassessments which require the Assessor to annually review 100% of the properties and revise the assessments . . . so that the assessments are equal to the current market value."

statutory system of real property assessment function should be revised Statewide." N.J.S.A. 54:1-104(a). N.J.S.A. 54:1-86 , titled Property Tax Assessment Reform Act, was a pilot program for Gloucester County, intended to bring uniformity in valuation that was absent due to individual decisions of municipal assessors. See N.J.S.A. 54:1-87(b) (since each taxing district had its own assessor, properties may not be revalued when required, and "is often postponed beyond what is prudent, causing some property taxpayers in a municipality to subsidize other property taxpayers for many years"). To achieve uniformity, a municipal-wide revaluation was to be undertaken by each municipality within a 3-year period, with the assistance of the county assessor, and thereafter, the county assessor along with deputy assessor would perform all real property assessment functions, including notifying the county tax board of, or the need for, revaluation or reassessment ("complete or partial"), monitoring progress of the same, and, among others, revising revaluations or reassessments conducted, or ordered to be conducted, by the county board, . N.J.S.A. 54:1-90(a); 54:1-92. See also Statement to Assembly No. 3722 (Feb. 9, 2009) ("transfer of the assessment function will require the revaluation of all municipalities within the county to create uniformity of assessment throughout the county-wide assessment district").

Similarly, Monmouth County's Implementation Schedule requires a revaluation of all properties as the first stage. While there are some procedural differences from the pilot program in that municipal assessors, as opposed to county/deputy assessors, are the actors, and the Demonstration Program mandates use of a common software by all municipal assessors, the functions to be performed are similar, i.e., real property assessment functions, including reassessments, all of which is towards the common goal of achieving uniformity in valuation and avoiding disparate valuations. Thus, Monmouth County's Implementation Schedule of first requiring a district-wide or complete revaluation of all properties within a taxing district, and

thereafter requiring annual reassessment or revisions by an assessor to maintain the 100% ratio, is consistent with its complementary counter-part, the pilot program.

As noted above, pursuant to Monmouth County's 5-year Implementation Schedule, the Township was to have performed a revaluation effective for tax year 2016, and thereafter, the assessor would have to begin the annual qualified reassessment, with the first of such qualified reassessment slated for tax year 2017. The facts demonstrate that there was no revaluation for 2016. Therefore, the application of the Freeze Act is not automatically barred.

The Township contends that revision of assessments to the current ratio equates to a complete reassessment, barring application of the Freeze Act. It argues that its assessor is "instructed" by N.J.S.A. 54:4-23 to review a "portion of the taxing district," then must "stratify properties into somewhat homogenous groups so there is a delineation of neighborhoods," and then must use a "quantifier of the change in value in the reviewed portion . . . and appl[y] it to the balance of the properties in the municipality." To this end, the assessor must "take care to uniformly revise those properties in each neighborhood." Thus, the Township points out, although not performing a "wholesale revaluation," i.e., not "100% of the properties" are inspected, the procedure equates to a "districtwide revaluation" for purposes of the Freeze Act. This is because the assessor must use "the mass-appraisal modeling software" as required by the Demonstration Program Law to properties not inspected, and thus, the Township "has universally reviewed the entire municipality and made changes to the assessment values where necessary."

N.J.S.A. 54:4-23 requires an assessor to value all real property at true value under the mandates of uniformity principles. Pursuant to L. 2001 c. 101 ("Chapter 101"), this statute was amended to permit an assessor to "make a reassessment of" certain real property or of properties in certain portions of a municipality if there was "reason to believe" that the assessments were

incorrect (too high or too low) or "not in substantial compliance with the law," so that there is uniformity in "taxable valuation." The assessor must follow certain notice and approval procedures before and after the reassessment.

The statute was again amended in 2013 under the Demonstration Program Law to provide that as to "real property located in a county participating in the demonstration program . . ., the assessor of the municipality in which the real property is situate, after due investigation, shall make a reassessment of the property in the taxing district that is not in substantial compliance." The amended statute also provides that after a "reassessment of a portion of the tax district pursuant to the provisions of this section,"[5] the assessor must certify that "the reassessment is in substantial compliance with the portions of the taxing district that were not reassessed." N.J.S.A. 54:4-23.

The Township's arguments that a reassessment of certain properties under N.J.S.A. 54:4-23 equates to a "complete reassessment" for purposes of the Freeze Act is unpersuasive. First, the facts do not support these contentions. There was no certification and corroborative objective proof that any of the explicated steps for reassessment was undertaken by the assessor. It is undisputed that for tax year 2016 the assessor had simply brought the values of certain properties to the current average ratio of 90.18%. However, this exercise is not, in and of itself, a complete reassessment. The average ratio is not always an automatic indicator that each property in a municipality is reflected at 100% of its true value (except for such presumption in a year for which there is a complete revaluation or complete reassessment). Rather, it is used to show the common level of assessment. See Campbell Soup Co. v. City of Camden, 16 N.J. Tax 219, 227, n.3 (Tax 1996) (the average ratio is "a promulgated ratio that is equal to the average of the assessed value

[5] The 2013 amendment changed the prior terminology "pursuant to an approved compliance plan" to "pursuant to the provisions of this section."

to true value of certain properties recently sold in the municipality"). This is clear because the testing of the true value with the average ratio (plus or minus 15%) is inapplicable in a year "in which the taxing district shall have completed and put into operation a district-wide revaluation program approved by the Director of the Division of Taxation . . . or a reassessment program approved by the county board of taxation." N.J.S.A. 54:51A-6(d). See also N.J.A.C. 18:12A-1.14(g) (the Freeze Act is inapplicable in the "case of an approved revaluation or district-wide reassessment").

Second, adjusting assessments of certain properties under N.J.S.A. 54:4-23 so that there is uniformity in valuation/taxation does not mandate a legal conclusion (i.e., sans any supporting facts) that the result is a complete or district-wide reassessment. By its very terms, N.J.S.A. 54:4-23 separates properties that require revision to their assessments and those that "are not reassessed," so that the former is in parity with the latter, an exercise popularly known as "assessment maintenance." Thus, without further competent proof, it cannot be concluded that when an assessor reassesses or revises assessments of properties in a portion of a municipality, there has been a complete or districtwide reassessment simply because Monmouth County is a participant in the Demonstration Program, and the Township has yet to perform a complete revaluation under the 5-year Implementation Schedule. As noted in Ennis v. Township of Alexandria, 13 N.J. Tax 423, 429 (Tax 1993), for Freeze Act purposes, the terms "revaluation" and "reassessment" mean the same since they are "used interchangeably and because of the similar comprehensive nature of the revaluation and reassessment programs." See also N.J.A.C. 18:12A-1.14(g) ("[o]rdinarily revaluations or district-wide reassessments involve adjustments to 100 percent of the line items" thus not subject to the Freeze Act, consequently, a "revaluation or

district-wide reassessment" which results in "less than" 50% change of line items, will not be approved by the" Division of Taxation.").

Indeed, the Legislature recognized the various assessment functions, including assessment maintenance when it required an assessor to "use the same property assessment software" for "[a]ll real property assessment functions . . . including the revaluation or reassessment of real property, as well as other assessment-based functions such as the development of a compliance plan, maintenance of assessments . . . ." See N.J.S.A. 54:1-104(e). This provision explains the inclusion in N.J.S.A. 54:4-23 of a reassessment of, or assessment revision to, some properties or to some in a portion of a taxing district in a Demonstration Program county, but does not automatically and without any proof in this regard, convert the same into a districtwide reassessment or revaluation. See e.g. N.J.S.A. 54:1-104(c)(2) (a plan under the Demonstration Program must "operate under all statutory requirements" applicable to real property assessments, and consistent with the Demonstration Program Law).[6]

The Township contends it need not prove that each and every property is 100% of its true value because a district-wide revaluation does not "necessarily obtain[] . . . the goal of . . . assess[ing] all parcels at 100% of true market value." Seaboard Landing L.L.C. v. Borough of Penns Grove, 28 N.J. Tax 607, 620 (Tax 2015). However, that case is inapposite. The issue there was not whether a reassessment or revision to assessments was a "complete revaluation or reassessment" for purposes of the Freeze Act. Rather, the court was simply observing that the assessments set during a district-wide revaluation can be erroneous, thus, there was no dichotomy in the Legislature presuming the average ratio is presumptively at 100% in the year of a

[6] The court's holding in this regard does not address, nor is it ruling on, revisions to assessments made by an assessor subsequent to a complete revaluation in a municipality of a Demonstration Program county pursuant to the 5-Year Implementation Schedule.

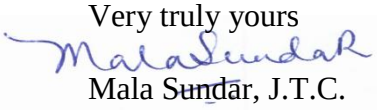
revaluation, while also permitting appeals against assessments set during revaluation. As it observed, "[h]ad the Legislature intended for Freeze Act relief to terminate only when a revaluation results in an assessment accurately reflecting true market value it could easily have included such language in N.J.S.A. 54:51A-8. It did not do so." 28 N.J. Tax at 621. There is no such issue here.

In sum, the court is unpersuaded that the assessor's revision of assessments to the average ratio for 2016, bars application of the Freeze Act under the facts of this case.

CONCLUSION

For the reasons explained above, and based on the facts herein, plaintiff's cross-motion for relief under the Freeze Act based on the 2015 judgment is granted. The Township's motion to dismiss the complaint for untimely filing is thus rendered moot, and is denied.

Very truly yours



Mala Sundar, J.T.C.