TAX COURT OF NEW JERSEY

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Corrected Opinion Notice

Date: December 16, 2019

Valentina Tartivata

John T. Lane, Esquire

From: Lynne E. Allsop

Re: Valentina Tartivita v. Borough of Union Beach
Docket number: 007705-2018

The attached corrected opinion replaces the version released on December 9, 2019 The Opinion has been corrected as noted below:

Citation to Ennis v. Twp. of Alexandria corrected to read 13 N.J. Tax on pages 22, 23 and 34.

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

Corrected 12/16/19 – Citation pgs. 22, 23 & 34

VALENTINA TARTIVITA, Plaintiff, v. BOROUGH OF UNION BEACH, Defendant.	:	TAX COURT OF NEW JERSEY DOCKET NO. 007705-2018 Approved for Publication In the New Jersey Tax Court Reports

Decided: December 9, 2019

Valentina Tartivita for plaintiff, a self-represented party.

John T. Lane, Jr. for defendant
(John T. Lane, Jr., Esq., attorney).

SUNDAR, J.T.C.

This opinion decides the issue of whether plaintiff is entitled to the benefit of the Freeze Act for tax year 2018. The Freeze Act law protects a property owner from facing annual increases in local property tax assessments by requiring that the adjudged valuation for a tax year (the "base year") as reflected in a final judgment of a county board of taxation or the Tax Court, be the assessment for the succeeding two tax years. Freeze Act relief is not available, if among other reasons, there was a change in value to the property after the base year's assessment, or there was a complete reassessment.

Plaintiff argues that since the Monmouth County Board of Taxation ("MCBT") issued a judgment reducing the assessment on her home ("Subject") to $135,000 for tax year ("TY") 2017, and the judgment was final, she is entitled to Freeze Act relief for TY 2018. Therefore, she

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contends, the Subject's assessment for TY 2018 (the first of the two TYs succeeding the 2017 base year) should be $135,000, and not $196,700, as was assessed by defendant ("Borough").

The Borough contends that it is required to, and performs, an annual "reassessment" of every property within the Borough under the Real Property Assessment Demonstration Program ("ADP") law, N.J.S.A. 54:1-101 to -106. Therefore, Freeze Act relief is inapplicable.

For the reasons stated below, the court finds that the Borough has not overcome its burden of proving that Freeze Act relief does not apply to the Subject for TY 2018.

ANALYSIS

Relief under the Freeze Act provisions, N.J.S.A. 54:3-26 (for final judgments of a county board of taxation) ("county board") and N.J.S.A. 54:51A-8 (for final judgments of the Tax Court) (collectively the "Freeze Act"), is not available if a "program for a complete revaluation or complete reassessment of all real property within the district has been put into effect." It is also unavailable if there have been "changes in the value of the property occurring after the assessment date." Ibid. The burden of proving the statute's inapplicability is upon the taxing district. Ibid. See also N.J.A.C. 18:12A-1.14(g) ("In case of an approved revaluation or district-wide reassessment" the Freeze Act will not apply "to the year in which the program becomes effective").

(A) Changes in/to the Subject as Barring Freeze Act Relief

The Borough's assessor certified and testified that the Subject's TY 2018 assessment changed because he reduced the functional obsolescence allowance, which had been provided due to the damage caused to it by Superstorm Sandy in the 2012 and 2013 TYs, from 67% to 33%. He stated that the higher rate was not merited because the Subject had already been repaired when sold to plaintiff, and further because the Subject was, and still is, habitable.

However, for the Freeze Act not to apply, there must have been "internal" or "external" changes that "substantially and meaningfully increased the value of the property." Cumberland Arms Assocs. v. Twp. of Burlington, 10 N.J. Tax 255, 263 (Tax 1988). Here, the court was not presented with any proof of "internal changes" such as additions or other improvements having been made to the Subject. Reduction of the depreciation percentage cannot be used to deprive relief under the Freeze Act absent evidence of any internal/external changes occurring subsequent to the assessing date upon which the county board judgment is based. Further, the assessor's testimony that the Borough, as a whole, experienced increases in property values is not proof of an external change. Id. at 272 ("[a] presentation that the subject property's alleged increased value is the result solely of general inflationary trends" is not proof of change in value under the Freeze Act). Therefore, absent evidence of internal/external changes to the Subject, relief under the Freeze Act is not barred because the functional obsolescence allowance percentage was reduced.

(B) Annual "Reassessments" as Barring Freeze Act Relief

The Borough contends that Freeze Act relief is inapplicable because it is setting annual "reassessments" under the ADP law, where each property is annually reassessed to 100% market value as determined by the assessor based on market-based sales data in the Borough. These actions, per the Borough, effectuate a "complete reassessment" under the Freeze Act for which relief is unavailable. A finding to the contrary, the Borough argues, would render the ADP law ineffective.[1] For the following reasons, the court is unpersuaded by these arguments.

[1] The Borough does not appear to be arguing that the ADP law impliedly repealed the Freeze Act. Indeed, it agrees that Freeze Act relief would undoubtedly apply to a specific property in other situations (e.g., additions to a property, conversion to another use, see N.J.S.A. 54:51A-8). In any event, implied repeal of a statute is disfavored. See Brewer v. Porch, 53 N.J. 167, 173 (1969). This is particularly so where a successive law, such as the ADP law, is experimental.

1. The Plain Language and Intent of the ADP Law do not Render the Freeze Act Inapplicable

Neither the Freeze Act nor the ADP law contain any cross-reference to each other. There were no amendments to either statute as to the inapplicability of Freeze Act relief to properties located in an ADP-participating county. Analysis of the inapplicability of the Freeze Act thus requires an inquiry into the language and intent of the ADP law. The court concludes that this analysis does not provide a basis for inapplicability of the Freeze Act provisions.

Enacted in 2013, the ADP law is a legislative experiment for improving current local property tax assessment practices, which "fail[] to take full advantage of a collaborative system of property assessment between a county board . . . through its administrator, and the municipal assessors employed by each municipality in a county." N.J.S.A. 54:1-102(a). The Legislature expected a collaborative system to benefit taxpayers "through a system of a more precise, technology-driven real property assessment process that would ensure that each municipal assessor is using the same technology as his or her colleagues in assessing real property." Ibid. Implied here is that pre-ADP, there was no uniformity among assessors in setting assessments due to the lack (or non-use) of modern technology. See also N.J.S.A. 54:1-102(c) ("use of cutting-edge technology under the direction of the county . . . board" would "enhance[] the performance of local tax assessors").

A collaborative system would also benefit taxing districts "by reducing the number of successful property assessment appeals filed annually with a county board . . . and the Tax Court," N.J.S.A. 54:1-102(b). Implied here is that under the pre-ADP system too many assessments were being reduced due to litigation, thereby reducing budgeted tax dollars. See ibid. (if successful appeals are reduced, tax refunds are reduced, thus protecting the "funding of municipal budgets");

Sponsors' Statement to S. 1213 19 (2012) (the ADP "will specifically address the systemic costs which result from the losses due to successful assessment appeals").

To remedy these issues, and "better manage the assessment, and taxation," of property so that assessment procedures are "responsive to the demands of the municipal budget calendar," N.J.S.A. 54:1-102(a), the Legislature decided it was "in the public interest . . . to implement a demonstration program to investigate whether systemic changes . . . including revisions to the assessment calendar and the assessment appeal process" would improve "the current system of real property assessment." N.J.S.A. 54:1-102(c). See also N.J.S.A. 54:1-104(a) (the ADP is "established . . . to evaluate the efficacy and functionality of a municipal system of real property assessment"); Sponsors' Statement to S. 1213 21 (the ADP is intended to "demonstrate . . . the value of a collaboration" between a county board and assessors by use of technology "in the real property assessment process," and the "benefits" of having appeals decided before a county board "calculate[es] . . . local tax rates").

Importantly, the ADP law authorizes a county board of an ADP-participant county to "compel the implementation of a revaluation or reassessment of real property in any municipality in the" county when it "determines the need therefor." N.J.S.A. 54:1-104(f). This order to compel must be made [i]n accordance with the provisions of statutory law and with any rule or regulation promulgated pursuant thereto." Ibid. Failure to comply with the order requires the county board to "cause the revaluation or reassessment, as appropriate, to be performed at the municipality's cost." Ibid. The county board's order to compel a revaluation or reassessment is appealable to the Tax Court. Ibid.

The above discussion of the ADP law does not support the proposition that the annual assessments performed under the aegis of the ADP law are a "complete reassessment" under the

Freeze Act, or a "district-wide" reassessment under N.J.A.C. 18:12A-1.14(c); 12A-1.14(g), nor does it provide any indication that the Freeze Act is inapplicable to the annual assessments conducted by a municipality within an ADP-participating county. Indeed, the phrase "annual reassessment" is not even mentioned in the ADP law. Rather, the language and intent of the ADP law show that it is an investigative effort to achieve efficiency and cut costs in the local property tax assessment process, and if required, the county board can compel a revaluation or reassessment.[2] See also Sponsors' Statement to S. 1213 19 ("The central premise of the demonstration program is a collaborative effort between the county tax board and municipal assessors" and the ADP "relies on this working relationship to address the issues of cost effectiveness and the accurate process of assessment.").

2. The MCBT's Implementation Schedule does not Render the Freeze Act Inapplicable

The ADP law left the mechanics of implementing a plan entirely to the counties, subject to certain requirements. N.J.S.A. 54:1-104(a) provides that the ADP is to be "directed by a county tax board through the county tax administrator pursuant to a revised assessment, and assessment appeal, calendar." An ADP-participant county should "commence" the ADP "under a plan developed by the county tax administrator of each demonstration county, approved by the county board of taxation." N.J.S.A. 54:1-104(c)(2). While the plan must be submitted to Taxation and

[2] The ADP law requires the Division of Taxation ("Taxation") and Division of Local Government Services ("LGS") to provide a report to the Governor and the Legislature by July1 after the fourth year of an ADP plan's implementation detailing the participant county's "experience . . . successes . . . [and] problems" with the ADP plan, and "recommendations for statutory or administrative changes in the current system" of local property tax assessments. N.J.S.A. 54:1-104(d). If proven effective as compared to the results of the "county-based" program, see N.J.S.A. 54:1-86, the Property Tax Assessment Reform Act, the Legislature would then decide whether a state-wide revision of "the current statutory system of real property assessment function" is warranted. N.J.S.A. 54:1-104(a).

the LGS, neither public entity can alter the plan "unless a provision" therein is "inconsistent with State law" or precedent as to real property assessment, and "the changes have been agreed to by a majority of the members of" a Steering Committee. Ibid.

Similarly, the ADP law also empowered Taxation and the LGS "to take any action" necessary or appropriate to implement the ADP law and its intent, including "waiv[ing] any provisions of statutory law and regulations that may be inconsistent with the intent or application of the" ADP law. N.J.S.A. 54:1-104(g).

Nonetheless, an ADP should "operate under all statutory requirements" and deadlines (as amended by the ADP). Ibid. Additionally, each assessor must use the "same property assessment software," which are the MOD-IV[3] and CAMA (Computer Assisted Mass Appraisal System), in performing a "revaluation or reassessment . . . [and] other assessment-based functions such as the development of a compliance plan, maintenance of assessments and the calculation of added assessments." N.J.S.A. 54:1-104(e); (c)(1). See also Sponsor's Statement to S. 1213 19 (the ADP law "sets strict criteria that a county must meet, and information a county must provide to" Taxation and the LGS "to implement the" ADP).

[3] The MOD-IV "is designed . . . to provide uniform reporting of assessment information throughout the state" and is maintained "to comply with current property tax laws." Division of Taxation, Handbook for County Boards of Taxation, §502.10 (July 2005). The program processes and produces tax lists, assessment lists, reports, tables, abstracts of rateables, and "must be used to process all tax information." Ibid. §502.12. It includes other software programs "to provide support for sales ratio, assessment, appraisal and related tax functions." Ibid. §502.10. The system can also generate a "Block and Lot Cross Reference Report," and has an "acreage calculation program," a "Limited Exemption/Abatement Audit Trail Report," an "Added/Omitted Billing Audit Trail," and a "Line item Comparison Report." Ibid. §502.12. The last report can produce a line item-by line item comparison of the prior and current year's assessments and the difference between them. Ibid. It is "generally produced the year a revaluation is implemented" but can be "produced on an annual basis." Ibid.

The court was not provided with any formal ADP plan approved by the MCBT and sent to Taxation or LGS. The court therefore does not know whether (a) there is a formal ADP plan; (b) that plan contains a provision that the Freeze Act is inapplicable; or (c) if so, whether Taxation or LGS agreed to such a provision. Nor are there any regulations, whether issued by Taxation or the MCBT, to show that the Freeze Act is inapplicable or is "waived" as to assessments performed in an ADP-participant county. Rather, the regulations, N.J.A.C. 18:12A-1.13(c) and N.J.A.C. 18:12A-1.14(g), continue to bar Freeze Act relief in the year when an approved "revaluation" (which is performed under contract by a third-party entity) or "district-wide reassessment" (performed in-house by an assessor) becomes effective.[4] Similarly, Taxation's informal guidelines bar Freeze Act relief only in instances of a "complete revaluation or district-wide reassessment." See Division of Taxation, Handbook for New Jersey Assessors, §§1105.15; 1107.20 (Oct. 2018); Handbook for County Boards of Taxation, §1105.20 (July 2005) (Freeze Act inapplicable when a "taxing district has put into effect a complete revaluation or approved reassessment of the entire municipality"). The absence of either a properly approved, formal ADP plan, or authoritative regulations providing that Freeze Act relief is unavailable in ADP-participant counties, dissuades the court from agreeing with the Borough that the Freeze Act is inapplicable to assessments set in

[4] Prior to the Freeze Act's bar for relief in a year there was a "complete reassessment," the regulations provided for the same bar, but initially using the term "reassessment," and later using the phrase "district-wide reassessment." See 11 N.J.R. 359(b) (July 5, 1979); 16 N.J.R. 2153 (Aug. 6, 1984); N.J.A.C. 18:12A-1.13; 12A-1.14(c); 12A-1.14(g). The term "reassessment" in N.J.A.C. 18:12A-1.14(c) (the regulation addressing reassessments) was substituted with the phrase "district-wide reassessment" as a result of the amendments to N.J.S.A. 54:4-23 by L. 2001, c. 101 ("Chapter 101"), which amendments permitted an assessor to reassess property comprising all or a portion of a taxing district. See 35 N.J.R. 4850(b) (Oct. 20, 2003). Similarly, this phrase was substituted in the Freeze Act regulation, N.J.A.C. 18:12A-1.13, as a "semantic" change. Ibid. In 2018, N.J.S.A. 54:4-23b was enacted and referenced the phrase "municipal-wide reassessment pursuant to N.J.S.A. 54:4-23," for purposes of allowing staggered interior inspections.

an ADP-participant county. See N.J.S.A. 54:1-104(c)(2) (despite the broad discretion given to a county under the ADP law, an ADP should "operate under all statutory requirements").

To prove that the Freeze Act should nonetheless be found by this court to be inapplicable, the Borough provided an informal document titled "2015 Annual Reassessment & the Impact on Property Taxes, Monmouth County Demonstration Program" prepared by the MCBT in August 2015. One portion contains the "Implementation Schedule" for TYs 2014-2018, another portion is titled "Top Ten Frequently Asked Questions" (hereinafter "FAQs"), and the last portion (appearing immediately after the FAQs portion) is titled "Monmouth County ADP 5-Year Implementation Overview," with a subtitle "Transitioning all 53 Municipalities from 'fractional assessments' to 'Annual Reassessments supported by 20% annual internal inspections'" (hereinafter "Overview Portion"). It is clear from the FAQs and Overview that the document is addressing, and is for the edification of, the Monmouth County taxpayers, and are not guidelines for assessors like the Handbooks cited above. Therefore, it is difficult for the court to accept this website's general information as a substitute for properly cognizable, legally acceptable evidence of Monmouth County's "plan" under the ADP law.

Even if the court were to consider this informal document informative as to the substance or intent of the MCBT's (presumably existing) ADP plan, it does not show that the Freeze Act is inapplicable. The "Implementation Schedule" portion (which could be legally cognizable since the assessor testified to the same[5]) of the document has no language explicitly rendering the Freeze

[5] The assessor testified that per the Implementation Schedule and under the ADP law, the Borough was required to perform a "traditional revaluation" for 2015, which it did. Thereafter, the assessor started to perform annual reassessments which would be the undefined abbreviation "QRA" identified on the Implementation Schedule. The Borough's assessor explained that "QRA" means Qualified Annual Reassessment, which likely means a complete reassessment but with only a need to inspect the interiors of 20% of the properties over a five-year period.

Act inapplicable. Rather, it only lists the assessment functions to be performed by each of the taxing districts, which are "Assessments revised to market value by Assessor," "Assessments revised to market value by traditional revaluation," and "Assessments revised to current ratio-revaluation pending for future years." Nowhere is there any advice or notice in this document that the Freeze Act will not apply for any particular TY. The same problem is attendant of the FAQ portion and the Overview portion. Indeed, in response to FAQ 7 ("What if I disagree with my new assessment"?), the MCBT responded that the taxpayer could initially consult with the assessor to correct errors on the property record card, if any, and afterwards file an appeal. While the MCBT provided the deadline for appeals and contact information in this regard, no language was included to warn a taxpayer that the Freeze Act may not apply for certain TYs if appeals were filed.

3. The Assessor's Testimony does not Prove that the Freeze Act is Inapplicable

The court was presented with evidentiary testimony from the assessor as to the steps he undertakes when performing annual assessments, and his opinion that his assessment functions equate to a complete or district-wide reassessment for purposes of the Freeze Act. However, the court is unpersuaded by this opinion, and finds that the assessor's testimony evidences that he is performing the obligatory annual assessment function required under the first sentence of N.J.S.A. 54:4-23.

The assessor's testimony was as follows: After the 2015 revaluation year, he commenced the annual reassessments wherein he reviewed the assessment of every property, but only 20% of those properties had interior inspections. First, he files Form AFR-A ("Application for Annual Reassessment Program" developed by Taxation) with the MCBT. For TY 2018, he checked the boxes that he would be completing a reassessment of properties in the Borough as of October 1,

2017, and that he would be inspecting 20% of the total line items.[6] By signing the form (which he dated June 27, 2017), he was undertaking to comply with the standards/procedures enumerated therein, and if approved,[7] to "proceed with the reassessment" and submit monthly reports of the progress and status, and he was acknowledging that "more than 50% of the line items must be changed to be recognized as a reassessment and utilize the Page 8 formula." The listed standards and procedures on Form AFR-A were to:

- Thoroughly inspect the exterior of all properties in the Borough;
- Thoroughly inspect the interiors of 20% of the "total line items" (and gain entry into "at least 50% of" the to-be-inspected properties);
- Review/correct a scaled sketch of the improvements "of each significant building";
- Use the Real Property Appraisal Manual to develop depreciated costs for residential buildings as of the assessment date;
- Update the assessments of exempt properties to their "current values";
- Develop a land value map with appropriate unit values;
- Analyze all sales within the past three years; extract "significant data" therefrom to "develop" factors needed to determine current market values of the assessment date;
- Obtain Chapter 91 income and expense information from owners of income producing properties;
- Use all approaches to value and reconcile them for a "final assessed value for each property" as of the assessment date;
- Send a Notice of Assessment (Chapter 75 card) to each property owner with the "new assessed value."

Per the assessor, the 20% annual inspection is performed by an outside company. He stated that he does not dictate, nor has any preference, on how the 20% is selected or determined by the outside company, or what is comprised in the 20% as long as at the end of the fifth year the interiors of 100% of the properties have been inspected. He noted that the 20% inspection likely started

[6] The assessor listed the line items as follows: Class 1 (vacant land) - 199; Class 2 (residential) - 2,056; Class 4 (commercial, industrial, apartment) - 56; and Class 15 (exempt properties) - 198.

[7] Form AFR-A contains a paragraph indicating the county board's approval or disapproval after a meeting in this regard, and an undertaking by the county tax administrator to (1) "validate that more than 50% of the line items" were changed, and (2) review the properties which had an interior inspection. Below that is a line indicating that Taxation's approval of the "proposal for an annual reassessment" is in accordance with "N.J.A.C. 18:12A-1.14(c-i)." All signature lines were blank.

with properties in the bay area, and that the outside company likely divided the tax map into five pieces, and would inspect all property classes within each such piece or geographic area.[8] However, the third party simply gathers data and does not set values of the inspected properties (nor has any input in this regard). Only the assessor analyzes the data and determines the values. The Subject was inspected in 2015 (or would have been as required by the regulations for a complete revaluation), but for TY 2018, had not yet been inspected as part of the 20% annual inspections (although the assessor had personally inspected the Subject's interior and exterior for purposes of plaintiff's 2019 petition before the MCBT).

The assessor stated that he created "Value Control Sectors" ("VCS") for the Borough's properties, wherein the Borough is divided or stratified/mapped into geographic "like groups" or neighborhoods. He created about 20 such areas in the Borough. The Subject's VCS was a small section since it consisted of very few residences, north of the Bay, with partial water views.[9] The assessor stated that the VCS allows him to change the assessments within a particular neighborhood (up or down) depending on what the sales (i.e., market) indicates, and helps control

[8] The court was not provided any documents in this regard or certifications from the outside company on how it divides the Borough's properties into five groups or how it decides to inspect any group in a particular TY. The assessor stated that Form AFR-A's requirement of reviewing a "scaled sketch of each significant building" comprised the 20% inspected properties.

[9] Post-hearing, the assessor submitted several sheets of a computer printout which showed, line-by-line, the property's identification (the numbers in the two columns presumably being the Block and Lot); the total 2018 assessment (under column headed "PRC" which the court presumes is "Property Record Card"); the total 2017 assessment; the dollar difference between the two; and the percentage difference between the two. Also included were two columns – one untitled but listing the alphabet "M" in each line item, and the other titled "VCS" below which were different abbreviations (e.g. AC99; WEDG; ECEN; WCEN; BSSA: POOL; MEAD; BRDW; SCHO; MID; MCD; SH1 (or 2 or 3); OCEA; SYD; SCHO; FS06; NATC; FSOV; ELLI; FS27; COTT). There was no explanation of what these abbreviations stood for or of which "value" sector they represented. The line items totaled 2,208 properties which is different from the summary of changes on the first page where the number of properties totaled 2,217, and also different from the number on Form AFR-A, which totaled 2,509.

values so that a value change in one area (e.g. houses on Front Street) would not necessarily mean a value change in another area (e.g. houses on 36th Street). Form AFR-A's requirement that a "land map be developed" is inherent in the VCS map, which is computer-generated.

The assessor asserted that he examines several data types. First, he examines all current sales in the Borough (through sale deeds and Taxation's sales ratio studies used to set the equalization ratios). He only uses those he deems reliable value indicators (e.g., he would not use bank or foreclosure sales to determine assessment changes). In 2018, there were roughly 100 sales, but not all were "useable." If there are no sales in a particular sector, he examines those in adjacent sectors or similar areas. For instance, he said the Subject is in a stratified area which he mapped out, and that area is unique in that it has very few homes. Sales in that area would assuredly affect the assessments of the other homes therein; however, if there were no sales, then he would examine the sales in a broader, but similar neighborhood and adjust assessments (up or down depending on what those sales indicate the market is) though also making other needed adjustments (for location, etc.). While there will be an increase (or decrease) in assessments in the neighborhood which has no sales, thus, a value change, the rate of increase (or decrease) may not be identical to the rate in the "similar" neighborhood with sales.

Assessment changes for improved properties are usually allocated to land. If, for instance, market changes were positive, warranting a 10% increase in his opinion, then the assessor would do a "global change" to land values, or as he stated, the "market changes are inherited by land." This method works, he stated, because he would cost out the improvement, and if the building did

not warrant a higher cost, and the property sold for $100,000 more than the assessment, any increase would be captured in or allocated to the land.[10]

The assessor stated that the Borough has been experiencing an increasingly strong market, with land and improved sales on the rise. Land values have been appreciating strongly and houses are being torn down to make way for new construction. Several properties are being flipped (i.e., purchased for a low price at bank sales, then flipped to a developer at a higher price). Even homes which were not raised post-Superstorm Sandy are being sold at higher prices (i.e., without discounts). Nor is flood insurance a deterrent in the sale of properties within the Borough. Thus, he opined, the Subject's lot, which may have sold for $75,000 in 2018, would now sell for over $100,000.

In addition to sales data, the assessor stated, he examines various statistical data sets. One is the Table of Aggregates, which showed that the aggregate assessments and tax base in the Borough have increased significantly since Superstorm Sandy.[11] Another is the sales ratio study generated by Taxation, which includes a sampling of sales over a two-year period, as to which the assessor stated, he would place more weight to recent sales. For instance, older sales might

[10] This is similar to the response to FAQ 6 ("Why did the allocation of my land and improvement value change?") where the MCBT stated that where the "value of the structure on the land is" determined "by the Replacement Cost Approach," then the "remaining amount" of the value determined for the property as a whole will be allocated to land.

[11] The Table of Aggregates is developed by the county board for each taxing district and recites, among others, the totals of parcels assessed and assessments (land, improvement, and both). See N.J.S.A. 54:3-17; 54:4-52. This is a "mechanism for determining" the taxes to be raised by each taxing district "within the county" and for equalizing valuation among those taxing districts. See Borough of Paramus v. Bergen County, 1 N.J. Tax 126, 131 (Tax 1980); Borough of Totowa v. Passaic Cty. Bd. of Tax'n, 5 N.J. 454, 463 (1950). The "Abstract of Rateables" is a consolidated version of the Table of Aggregates. See Handbook for New Jersey Assessors, §313.03.

indicate a 2% market increase while more recent ones may show 7% increase, in which case he would place lesser weight on the older sales.[12]

Another statistical data source he uses is the average ratio developed by Taxation (under Chapter 123). The assessor stated that this ratio was not the deciding factor in determining his assessments, because it (a) is an average; and (b) is based on sales from the past two years. He however examines the most current sales up to the assessment date, and thus, unlike the ratio studies, he is continually revising the assessments up to 100%. The average ratio, he stated, was more of a general check to ensure that the Borough's assessments were not above or below it.

Yet another data source the assessor stated he reviews is the "Master Reassessment File" which is an internal computerized compilation for all the properties in the Borough as to size, location, condition, age and the like. He also reviews property record cards, and annually tracks the allowance for functional obsolescence provided to various properties as a result of Superstorm Sandy since the Borough was one of the taxing districts hit hardest by the storm (and received FEMA assistance). He stated that allowances for functional obsolescence should be reduced to bring the repaired storm-damaged properties back to the assessment list at market value.

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[12] Sales ratio studies are the assessment-to-sales ratios computed by Taxation, whereby it analyzes recorded sales completed between July 1 and June 30, rejects those deemed non-market, and then compares the sale prices to the assessments of those sold properties to determine the "ratio of assessed to true value." Handbook for New Jersey Assessors, §1003.02. Thus, "if the assessed values of properties sold average 90% of the sales prices, it is assumed that all similar properties in the taxing district are being assessed at an average of 90% of their true value." Ibid. Note that the sales data is provided by the assessor, who also has an input in deciding whether a sale is "useable" for purposes of the ratio study. Ibid. The ratios are determined as to four classes, vacant land (Class1), residential (Class 2), farm (Class 3), and commercial (Class 4). Id. §1005.01. All of this information is publicly available. Id. §1005.06. "The sales-assessment ratio data have been used for equalization by the aggregate method for" apportioning county taxes among taxing districts, "and the proportional distribution of state school aid." Switz v. Twp. of Middletown, 23 N.J. 580, 597 (1957), aff'g as modified, 40 N.J. Super. 217 (App. Div. 1956).

Based on his review of all of the above-explicated data sources and his analysis of the market trends, the assessor maintained that he revised not only the Subject's TY 2018 assessment to what he opined was its 100% true value, but also the assessments (up or down) of several other properties in the Borough by 15% or more for TY 2018. He provided an "Assessment Change Review" worksheet which showed the changes for the 2,217 properties. For instance, the number of properties meriting a decrease totaled 478, while those meriting an increase totaled 1,652.[13] 84 properties had no changes. Properties which had either "judgments" or "added assessments" were "removed" (presumably meaning that these did not merit any changes).

Once he has completed his assessments, the assessor stated, he tabulates his results in the annual tax list which is filed with the MCBT. He does not, nor is he asked to, file any other documents with Taxation. The MCBT, he stated, uses the same software (MOD IV) to verify his assessments, and will examine the same sales he analyzes, review his results, and query him on questionable assessment changes. This step, he opined, was not being done in taxing districts of counties not participating in the ADP. He also pointed out that in non-ADP counties, assessments are not changed or revised annually because the taxing districts are satisfied that they are "at ratio," meaning at or near the average ratio set by Taxation. Thus, even if there are sales showing an increase or decrease in the market, the assessments will not be changed (unless a particular property has been improved or suffered material destruction). In the Borough, however, the assessor stated, he is constantly revising the assessments to 100% based on the market sales.

[13] Changes were categorized into percentage corridors, 0-2%; 2-5%; 5-10%; 10-15%; 15% and above. The number of properties in these corridors with a decrease in assessments was 136; 127; 132; 49; and 34, respectively, totaling 478. Properties in these corridors with an increase in assessments totaled 345; 258; 376; 271; and 402, respectively, totaling 1,652.

The assessor also stated that the number of petitions of appeal to the MCBT have reduced since 2015. There were about 56 for TY 2018. He stated that most of those petitions complained of data errors discovered in the "ongoing inspection cycle," in response to which he conducted his own inspection, corrected the data, and then would "stipulate the value." Thus, he stated, the total number of appeals is "misleading." He also noted that for TY 2015, the Borough "lost 31 cases," four cases for each of TYs 2016 and 2017, six cases for TY 2018, and five cases for TY 2019.[14] He stated that the quantum of "true value-based" appeals has decreased in the Borough, consequently refunds or credits to taxpayers have also "been drastically reduced."

The court finds the assessor to be a credible, diligent, and knowledgeable individual. There was nothing to refute that he does (or did) perform the various steps he outlined in his testimony. However, the court opines that the Borough's assessor's undoubted diligence is no different from, and indeed is precisely what is expected of any assessor under N.J.S.A. 54:4-1, which provides that an assessor must "value[] and assess[]" all real property "at the taxable value prescribed by law," and under the first sentence of N.J.S.A. 54:4-23, which provides that each assessor must "after examination and inquiry, determine the full and fair value of each parcel of real property situate in the taxing district at such price as, in [the assessor's] . . . judgment, it would sell for at a fair and bona fide sale by private contract on October 1" of the previous year. The latter statute allows an assessor to annually revise assessments "when deemed necessary." Berkley Arms

[14] The court's records show appeals to the Tax Court for TYs 2015-2019, including plaintiff's, were seven; five; three; one; and one respectively (TYs 2018 and 2019 were plaintiff's appeals). Two of the three appeals for 2017 were correction of errors complaints filed by the Borough. Only one plaintiff was a Class 4 (industrial) property owner, which settled its appeals for an assessment reduction, with no mention of the inapplicability of the Freeze Act in the stipulation of settlement. The remaining plaintiffs (other than plaintiff herein) were home-owners (two of whom filed appeals each year for multiple years), and settled their appeals for assessment reductions, with no mention of the inapplicability of the Freeze Act in the stipulations of settlement.

Apartment Corp. v. City of Hackensack, 6 N.J. Tax 260, 267 (Tax 1983). While this statute has been oft-cited to allow for changes in some but not all assessments, i.e., "assessment maintenance," see Regent Care Center, Inc. v. City of Hackensack, 362 N.J. Super. 403, 411-412 (App. Div. 2003); Chadwick 99 Associates v. Dir., Div. of Taxation, 24 N.J. Tax 493, 503-504 (Tax 2008) ("an assessor [can] select a group of similar properties for reassessment . . . to ensure equality of burden"), this statute does not bar an assessor from changing all assessments annually if the market changes so require. In other words, N.J.S.A. 54:4-23 is not limited to assessment maintenance of only a few or one class of properties within a taxing district.

That the Borough's assessor's tax list is reviewed by the MCBT, which, using the same software, can agree or disagree with his assessment changes, is not proof that the Borough's annual assessments are any different from assessments which are set under the first sentence of N.J.S.A. 54:4-23. This tax list review obligation has always existed. See N.J.S.A. 54:4-36. Note also that "members" of a county board have always had to "view and inspect, so far as possible in all cases, the various assessed properties in the various taxing districts in the county, and make their revision and correction after such view and inspection." N.J.S.A. 54:3-15. Neither statute was amended by the ADP law.[15] See also Handbook for County Boards of Taxation, §801.10 (a county board must "secure uniform taxable value" of all property within the county and to this end, must "view and inspect assessed property and make revisions and corrections after inspections").

The assessor's testimony that in taxing districts of non-ADP participant counties assessments remain static for long periods of time, and the only changes are revising them to the

[15] The ADP law did amend the deadlines for submission of tax lists by assessors. For townships in an ADP-participating county, an assessor is to submit a preliminary tax list by November 1 and a final assessment list by May 1. See N.J.S.A. 54:4-35(b).

Chapter 123 ratios, may be true. See e.g. Handbook for New Jersey Assessors, §§ 901.01; 901.08 (detailing the various trends which an assessor should consider for valuation purposes as part of assessment maintenance under N.J.S.A. 54:4-23, and noting that since it would be cost prohibitive to comply with the "literal interpretation of State law [which] requires that every property be reappraised/reassessed every year . . . [a]s a practical compromise, most assessors use a base year for assessments"[16]). Nonetheless, the alleged practice of revising assessments to the Chapter 123 ratios is not the directive under N.J.S.A. 54:4-23, nor a discretion allowed therein. That such practices exist does not necessarily elevate the Borough's assessor's diligently tracked assessments to something belonging outside of the first sentence of N.J.S.A. 54:4-23. While mechanically carrying forward one year's assessment to the next until a revaluation without being "alert[] to changed valuation factors peculiarly affecting individual properties" is disfavored, see Tri-Terminal Corp. v. Borough of Edgewater, 68 N.J. 405, 414 (1975), stability of assessments is a desired goal. See In re Appeal of East Orange, 103 N.J. Super. 109, 117 (App. Div. 1968) ("we are mindful that as a practical matter there must be stability in assessments and that values for purposes of taxation should possess a measure of permanency which render them secure against general temporary inflation or deflation."). Cf. Curtiss Wright Corp. v. Borough of Wood-Ridge, 4 N.J. Tax 68, 81 (Tax 1982) (where parties settle, they must do so "with full recognition of the effect of the [F]reeze [A]ct," else every settlement "agreement were to be open to scrutiny by the Tax Court and county boards" which "would all but nullify the pragmatic purpose for which the [F]reeze [A]ct was enacted," and "[s]tability in assessments would be nonexistent.").

[16] The phrase "base year" is undefined, but likely means the revaluation or district-wide reassessment year.

Indeed, the court's conclusion (that the annual assessments performed in the Borough are a function under the first sentence of N.J.S.A. 54:4-23 and not a complete reassessment, it being undisputed that the MCBT did not compel or order a revaluation or a district-wide reassessment for TY 2018), is buttressed by the assessor's testimony that one of the data sources he uses is Taxation's average ratios. If, as he stated, his assessments are reflective of 100% of each property's market value, then there would be no need for him to examine this data, even as an alleged general check. If the annual assessments are deemed a complete reassessment, it is unclear why Taxation's published average ratio for the Borough is not 100% each tax year. Although the assessor claimed that Taxation's ratio was an average based on a two-year study, thus, not a determinative factor to him in setting assessments, the MCBT's Implementation Schedule also envisages a three-year weighted average study in setting assessments. See infra p.24. Diligently performing the obligation required under the first sentence of N.J.S.A. 54:4-23 does not elevate the annual assessments to a complete reassessment for purposes of the Freeze Act.

Verily, the third sentence in N.J.S.A. 54:4-23, included by the ADP law, provides that "[i]n the case of real property located in a county participating in the [ADP] . . . 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." This sentence appears to authorize an assessor in an ADP-participating county to change the assessment/s of one, or few, or all properties, provided the assessor, after investigation, believes that the assessment/s are not in "substantial compliance"; thus it allows for a partial or a complete reassessment. See also N.J.S.A. 54:4-23b (allowing attempted interior inspections over an 8-year period for properties located in an ADP-participant county "for purposes of a municipal-wide reassessment pursuant to N.J.S.A. 54:4-23").

However, inclusion of this third sentence does not change the court's opinion. Authority to perform a complete or partial reassessment has since the enactment of Chapter 101. See N.J.S.A. 54:4-23 (second sentence) ("when the assessor has reason to believe" that there is over- or under assessment, "or that the assessment of property comprising all or part of a taxing district is not in substantial compliance with the law and that the interests of the public will be promoted by a reassessment of such property," he or she must "make a reassessment of the property in the taxing district that is not in substantial compliance . . . ." [17] The third sentence simply aligns the ADP law to the existing authority. See N.J.A.A. 54:1-104(c); (e) (an ADP should "operate under all statutory requirements," and assessors must use the "same property assessment software" in performing a "revaluation or reassessment . . . [and] other assessment-based functions such as the development of a compliance plan, maintenance of assessments and . . . added assessments").

That an assessor can conduct a district-wide reassessment under this third sentence of N.J.S.A. 54:4-23 does not require a conclusion that the Borough's annual assessments must be deemed a complete or district-wide reassessment. There is simply no allegation or proof that the assessment of all properties in the Borough lacked "substantial compliance." The Borough's assessor's testimony only proved his diligence in adjusting assessments annually. It does not prove substantial lack of uniformity in taxation. The third sentence of N.J.S.A. 54:4-23 does not convert the annual assessments in the Borough to a complete reassessment for purposes of the Freeze Act.

[17] The regulations effectuating Chapter 101 noted that N.J.A.C. 18:12-1.14(c)(1) was being amended to clarify "that the Application for Reassessment (Form AFR) to be completed is for a district-wide reassessment to help implement recent amendments to N.J.S.A. 54:4-23 (P.L. 2001, c.101, §1)." See 35 N.J.R. 4850(a).

4. The Borough's Annual Assessments are not Equivalent to District-Wide Reassessments

A district-wide reassessment "results in a significant difference in the aggregate assessed valuation of that taxing district from one year to a following year, other than that caused by inclusion of added assessments or other new construction" and also "results in a variance in values from one year to a following year in a substantial number of individual parcels of real property in that same taxing district." Ennis v. Twp. of Alexandria, 13 N.J. Tax 423, 426-27 (Tax 1993) (quoting Handbook for New Jersey Assessors, §801.13 (3d ed. 1989)). See also Regent Care, 362 N.J. Super. at 417 (if an assessor when performing the duties under N.J.S.A. 54:4-23 "observe[s] a broad-based shift in market values, [then] a district-wide revaluation or reassessment may be required"); Handbook for New Jersey Assessors, §903.01 (district-wide reassessment or revaluation "may be needed when properties in a taxing district are not being assessed at the same rate of true value and/or are being assessed substantially below or above true market value," which could be due to economic factors or due to poor/incorrect data use or maintenance by an assessor) (emphasis added).

Here, the line item-by-line item chart of assessment changes for the 2,208 properties from TY 2017 to TY 2018 provided by the assessor does not reflect any such magnitude of difference or even a significant difference. The aggregate assessment for TY 2017 was $512,293,400. The aggregate assessment for TY 2018 was $537,535,200. The net change is $25,241,800 or about a 4.9% increase (if the negative changes, i.e., decreases in assessments are included, then the gross change is $39,596,600, or roughly 7.7%). To the court, this is not a "significant difference in the aggregate assessed valuation of that taxing district from one year to a following year." Further, although the assessment changes for some properties are asserted to be over 15%, the dollar amount of change is insignificant. For instance, one line item identified as Block 173 Lot 11 was

assessed at $8,000 in TY 2017 and was increased to $9,800 in TY 2018, which is a 22.5% increase. Similarly, a $3,700 increase to a $20,300 assessment translated to an 18.23% increase. Thus, the over 15% changes are not persuasive to show that there were significant assessment changes, especially where the number of properties in this category was only 436 (402 properties↑ 15% and 34 properties ↓15%) of the total 2,208 properties. These are simply not a significant number with substantial value changes.[18]

Even if the court were to consider the MCBT's informal education to the public as informative of its ADP plan (and somehow persuasive evidence for the issue herein), that document also states that while the first and second year of the Implementation Schedule will show significant assessment changes, from then on there will be only minimal assessment changes. For instance, for FAQ 4 "Should I expect a large change in my assessment value," the MCBT responded it was unlikely because,

> [the] transition from a 'fractional assessment system' (where the assessment represents a fraction of the correct value) to 100% of market value will take place only once. Moving forward, the expectation is that the change in your assessment will be marginal as market values change. True market value is fairly constant; a multiple year study is used to gauge market conditions to secure against general temporary inflation or deflation.
> Once a municipality has transitioned to market value, each year the Assessor, by law, must review each property and revise the assessment, both up and down, in accordance with market value evidence, so that the assessment is set equal to the current market value. While the taxpayer will experience the initial shift from a 'fractional assessment' to 100% of market value in a similar way that they experienced the implementation of a revaluation, moving

[18] Public documents such as Monmouth County's Abstract of Rateables (required to be issued by statute) show the "Total Taxable Value of Land and Improvements" (Column 2) for the Borough as $530,694,800 in 2017 and $564,882,100 in 2018. It is doubtful that this $34+ million difference (and presuming all changes were only due to market forces) would be considered as a "significant difference in the aggregate assessed valuation of that taxing district from one year to a following year." Ennis, 13 N.J. Tax at 426.

> forward all future annual changes are expected to be small. Annual assessment changes are expected to be in accordance with observed market value data. The . . . assessor under the [ADP] must review and revise the assessment on an annual basis to maintain a 100% market value to assessment ratio.

Similarly, in the Overview Section of this informal document, the MCBT noted that from 2017 onwards "with annual adjustments 100% MV [market value] to 100% MV for every parcel, on average all future's years assessment changes should be increasingly more stable."

The same overview section also notes that future stability would be assured because reassessments will be "driven by a 3-year weighted average of the observable change in the neighborhood-level market." This means that if the market is increasing, undue emphasis will not be placed on the most recent sale so that the "[a]ssessor is not 'chasing the highest dollar.'" However, if the market is on the decline, then "a higher weight will be given to the more recent (presumably lower sales) to help prevent significant over-assessment." And in areas lacking sample sales, a "well-documented and conservative multiplier will be used" so that "all properties flow with the current market" and there is "uniformity" between "active . . . and inactive sales areas." Thus, going forward, "the entire assessment function should be focused on annually delivering an assessment list that is increasingly in line with current market values."

That the FAQ portion of the document states (in response to question 1) that every township in Monmouth County is, under the ADP law, "in the process of transitioning to a new property tax model where annual reassessments will appraise all real property . . . according to its true and fair value" so that there is a "fair[] distribut[ion of] tax burden among all property owners," does not convert the Borough's annual assessments into district-wide reassessments. To the contrary, this statement restates the obligations explicated in N.J.S.A. 54:4-1 and the first sentence of 54:4-23, and the constitutional requirement that there be uniformity in taxation. See Regent Care, 362 N.J.

Super. at 415 ("The dominant principle of the State Constitution's uniformity clause is to mandate equality of treatment and burden").

Finally, of note is the Overview portion of the MCBT's informal document which states that the anticipated consequence of the "singular goal . . . to deliver accurate individual assessments" is a saving of refunds during the appeal process. Thus, "[i]f each assessment is defensibly set equal to current market value than (sic) all of the significant systemic costs previously associated with the appeal process can be saved by the taxpayer." Although the savings are attributed to the taxpayer, there is no question that an affirmance of assessments either by a county board or this court also saves the taxing districts money (no need to pay tax refunds) as explicated by N.J.S.A. 54:1-102(b), and another goal of the ADP law which was to "specifically address the systemic costs which result from the losses due to successful assessment appeals." Sponsor's Statement to S. 1213 19. What this is saying is that if the assessments are annually maintained at 100% of market value, then the chances of their reduction when they are appealed are or should realistically be low (since an appeal of an assessment is a challenge to the true or market value of the property being assessed, which must be proven by market-based data such as comparable sales, income, expenses and capitalization rates, and costs). This also then shows that the primary goal of adjusting or maintaining assessments to reflect 100% of market value is to lessen the chances of loss of tax appeals, which would save costs (no refunds due taxpayer), not to prevent application of the Freeze Act.

Put together, all of the above information shows that the annual assessments are not a "complete reassessment" or "district-wide reassessment" as this term has been understood, which is that there has to be a significant number of over-or-under assessed properties, and that reassessment of all properties will result in significant variances or changes from the past year.

Rather, the assessor is annually performing what is obligated to be annually performed under N.J.S.A. 54:4-23, which therefore should result in minimal changes from one year to the next with a non-significant number of properties being over/under assessed. Simply because the assessor changes the assessments for several line items does not automatically require an opposite conclusion. These types of annual changes could (and should) ensue for assessments obligated under the first sentence of N.J.S.A 54:4-23. See Regent Care, 362 N.J. Super. at 417 (under N.J.S.A. 54:4-23 assessors "have a statutory obligation to monitor all available indicia of property value . . . and to correct inequities in tax years other than years of district-wide revaluations") (citation and internal quotation marks omitted). Cf. Handbook for New Jersey Assessors, §907.12 (after a revaluation, which is an "expensive undertaking," care must be taken to ensure that the "resulting assessment upgrades should not be allowed to deteriorate during the years after the revaluation's completion. Adequate provisions should be made to keep the revaluation up-to-date. Unless values are annually maintained, within a few years a subsequent revaluation may have to be undertaken, at a higher cost to the community.").

And this is also what the ADP law envisaged. See Sponsor's Statement to S. 1213 19 (the ADP "proposes a real property assessment system that will remain decentralized for the purpose of creating a more responsive and accurate assessment function that can annually adjust to the flow of the county's varied markets and submarkets"); MCBT's Response to FAQ 1 (taxpayers "have been led to believe" that assessments are static yet in fact "'implied market value[s]'" of properties change continually albeit at varying rates for varying properties, therefore, if there are assessment "inequities," the assessor should adjust assessments "to maintain equity.").

5. The Regulations Do Not Specify or Clarify that an Annual Reassessment Equates to a District-Wide Reassessment

District-wide reassessments (1) require an assessor to make an application using Form AFR; (2) require the assessor to provide written notice to local and county authorities the "basis" as to why the "proposed reassessment is needed" prior to filing Form AFR; (3) require approval of the AFR by both a county board and Taxation, (4) require the assessor to generate a plan of work and provide periodic status reports, (5) anticipate assessment changes to 100% of the line items, (6) require exterior inspections of all properties; and (7) require actual or attempted interior inspections of 100% of all properties (unless the assessor chooses to do so over a period of five years or less). See N.J.A.C. 8:12A-1.14(c)-(e). These requirements are the same for revaluations. See N.J.A.C. 18:12A-1.14 (b); (d)-(e). If these steps are undertaken, then the Freeze Act is inapplicable. See N.J.A.C. 18:12A-1.14(g) (Freeze Act inapplicable "[i]n case of an approved revaluation or district-wide reassessment").

"Annual Reassessments" are addressed by N.J.A.C. 18:12A-1.14(i) (hereinafter "Subsection (i)"). The procedural requirements are similar as stated in the prior paragraph except that the assessor must use Form AFR-A, exterior inspection of all properties must be undertaken "annually," and interior inspections must be done or attempted "within the five years immediately preceding the year of implementation of the proposed annual reassessment program." N.J.A.C. 18:12A-1.14(i)(1); (2)(i); (2)(ii).

Initially, it is unclear whether Subsection (i) even applies to an ADP-participant county. When promulgating this regulation, Taxation explained,

> New subsection (i) is proposed because many municipalities are performing annual reassessments and are moving away from a four-year period of reassessments with 25 percent annual inspection report to a five-year period of inspection with 20 percent annual

> inspection requirement. This is supposed to assist municipalities by lowering costs through extending the inspection period. New subsection (i) is proposed for the purposes of equity and reducing costs because of the changes affecting only certain counties under N.J.S.A. 54:1-101 et seq.
>
> [48 N.J.R. 1605(a) (Aug. 15, 2016) (emphasis added).]

The emphasized sentence appears to indicate that ADP-participant counties have had "some changes" which presumably is the five-year 20% inspection that is cost effective, therefore, for purposes of equity, this benefit i.e., the same five-year inspection spread which will cut costs, should be available to other taxing districts in non-ADP participant counties. In other words, the emphasized sentence appears to indicate that since taxing districts in an ADP-participant county are able to lower costs by staggering interior inspections over five years, other taxing districts should also be able to do so as a matter of "equity." Thus, and leaving aside the issue of whether or not Taxation can extend the procedures utilized in an ADP-participant county to non-ADP-participant counties,[19] the court cannot conclude that Subsection (i) even applies to the Borough.

Even if for some reason Subsection (i) applies, the court is not convinced that the Borough's annual assessments are a district-wide reassessment such that Freeze relief is barred for the reasons explained above. This is especially where Taxation acknowledged that Subsection (i) does not apply to district-wide reassessments. See 49 N.J.R. 271(a) (Feb. 6, 2017). More importantly, Taxation did not amend N.J.A.C. 18:12A-1.14(g), the regulation barring applicability

[19] Only two counties can initially participate in the ADP, and after two years, two more counties can, but only after meeting certain requirements. N.J.S.A. 54:1-104(a). It is undisputed that only Monmouth County is a participant in the ADP. Further, an ADP is to be implemented "under a plan developed by [its] county tax administrator," and approved by a county board within a certain time period. N.J.S.A. 54:1-104(c)(2).

of the Freeze Act, to include "annual reassessments." Rather, this latter regulation continues to apply only to an "approved revaluation or district-wide reassessment."

Additional reasons why the regulatory "annual reassessment" is not the same as the regulatory district-wide reassessment are as follows: the regulation pertaining to district-wide reassessments envisages changes to 100% of the line items.[20] This is not a requirement in Subsection (i). In a district-wide reassessment (or in a revaluation) the assessor must provide periodic reports or plan of work, however, Subsection (i) is silent in this regard. In a district-wide reassessment interior inspections must be completed or attempted for all properties, whereas such inspections (attempted or actual) are required over a five-year period under Subsection (i).

It is true that staggered interior inspection period (over five years or less) is also provided for a district-wide reassessment, wherein the assessor should file Form AFR "in the first year the interior inspections are to begin," and then provide an annual list of properties which were

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[20] The language as to changes to 50% of the line items was included in 2004 to N.J.A.C. 18:12A-1.14(g), the regulation barring Freeze Act relief in instances of a revaluation or a district-wide reassessment. The regulation then read: "No revaluation or district-wide reassessment will be approved by the Director where less than 50 percent of the line items have changed. Ordinarily revaluations or district-wide reassessments involve adjustments to 100 percent of the line items." See 36 N.J.R. 1022(a) (Feb. 17, 2004). In 2017, N.J.A.C. 18:12A-1.14(g) was amended to say that ""[n]o revaluation of district-wide reassessment will be credited by [Taxation] for recognition on the . . . annual Table of Equalized Valuations" if less than 50% of line items had assessment changes. See 48 N.J.R. 1605(a). No reason was provided for this language change of "approval" to "credited" for ratio purposes. The regulation continues to expect "adjustments to 100 percent of the line items." N.J.A.C. 18:12A-1.14(g).

Note that N.J.A.C. 18:12A-1.14(c)(3), pertaining to district-wide reassessments has consistently provided that "[o]rdinarily district-wide reassessments will involve adjustments to 100 percent of the line items." There is no language permitting at least 50% line item changes. Because of this, the court does not read N.J.A.C. 18:12A-1.14(g) as barring Freeze Act relief as long as 50% of line items have had assessment changes. Rather, the regulations expect 100% of line item changes (up, down, or no change) in a district-wide reassessment, which keeps in line with the holding in Ennis and the Handbooks. See also 35 N.J.R. 4850(a) (although N.J.A.C. 18:12A-1.14(g) provides for 50% line item change, it "specifies that revaluations or reassessments ordinarily involve adjustments to 100 percent of the line items") (emphasis added).

inspected "until the project is complete." N.J.A.C. 18:12A-1.14(c)(3)(iii).[21] This language is absent in Subsection (i) which only requires interior inspections be completed by 5 years or less.

Verily, there is some commonality in language as to the staggered interior inspection whether chosen under a district-wide reassessment or required under Subsection (i). The district-wide reassessment regulation provides that where an assessor "is performing interior inspections over a period of five years or less and only implementing the reassessment after 100 percent of interior inspections have been attempted," then he or she should file Form AFR in year one of the interior inspections, and thereafter, a list of inspected properties until all properties are inspected. N.J.A.C. 18:12A-1.14(c)(3)(iii) (emphasis added). This indicates that a district-wide reassessment occurs after the period when all properties' interiors have (or attempted to have) been inspected, whether it is five years from the beginning of inspections or less. To state this another way, the regulation appears to indicate that interior inspections of 100% of all properties is required before implementing a district-wide reassessment.[22] See also N.J.S.A. 54:4-23b (as to "inspections of

[21] The amendment in 2017 extending interior inspections to a five-year period was "to ensure that the inspections are actually being performed and add a measure of accountability. There had been situations where municipalities were being billed for inspections where it was hard to determine whether the inspections had actually been performed. The proposed amendment should help reduce costs for municipalities and reduce an avenue of abuse." See 48 N.J.R. 1605(a).

[22] Note that this same intent prevailed in the pre-2017 regulation, albeit as subparagraph (ii), which had provided for a four-year interior inspection cycle. See N.J.A.C. 18:12A-1.14(c)(ii) (pre-2017), which stated that interior inspections "of all properties must be" completed "within the four years immediately preceding year of implementation of the proposed district-wide reassessment. This may be done in a four-year ongoing assessment cycle. Attempt to inspect the interior of all properties must be made in the four-year period." The purpose of this regulation was to "bring[] inspection requirements for district-wide reassessments in conformity with the inspection requirements for revaluations for consistency." See 35 N.J.R. 4850(a). Thus, "for all such reassessments, the exterior of all properties be inspected, the inspections of the interior of all properties be attempted within the past four years immediately preceding the year of implementation of the proposed district-wide assessment, which may be done in a four-year on-going assessment cycle. This paragraph codifies traditional practices." Ibid. (emphasis added). Although in 2017, this subparagraph was replaced by subparagraph (iii) as noted above, and

real property for purposes of a municipal-wide reassessment pursuant to R.S.54:4-23," an assessor of a taxing district in an ADP-participant county must "make three good-faith attempts to physically inspect the interior of each of the properties in the municipality not later than December 31 of the eighth year immediately preceding the year of the implementation of the proposed district-wide reassessment."). This also indicates that all properties must actually or attempted to have been inspected by eight years prior to implanting a district-wide reassessment, and further indicates that a complete reassessment, as that phrase is traditionally understood, would not be an annual event.

Subsection (i) somewhat similarly provides that interior inspection "of all properties must be attempted . . . within the five years immediately preceding the year of implementation of the proposed annual reassessment program." N.J.A.C. 18:12A-1.14(i)(2)(ii). Thus, this language also appears to indicate that interior inspections of 100% of all properties is required before implementing an annual reassessment. This similarity in language could allow for an interpretation that once the interior inspection of all properties are completed, then the annual reassessment could qualify as a district-wide reassessment, especially since every year the exterior of all properties must be inspected. However it is not clear if this is the intended effect. If so, then there would be no need to file Form AFR-A at all.

Perhaps this ambiguity may be explained by the MCBT's comment to proposed Subsection (i), with which Taxation agreed, that "the phrase 'proposed district wide reassessment' . . . be replaced with 'proposed annual reassessment program' because the intent [is] to allow annual

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provided a five-year period, the intent still was that interior inspection of 100% of the properties be completed before implementing a district-wide reassessment, so that district-wide reassessments would be treated the same as district-wide revaluations.

reassessments to commence within five years of either the completion of a revalution (sic) or a district-wide reassessment, and . . . [N.J.A.C. 18:12A-1.14(i)(2)(ii)] does not pertain to district-wide reassessment programs." See 49 N.J.R. 271(a). The comment appear to indicate that the annual reassessments do not become a district-wide reassessments under Subsection (i) and that district-wide reassessments continue to be governed by N.J.A.C. 18:12A-1.14(c).

Regardless of this ambiguity, neither N.J.A.C. 18:12A-1.13 nor 18:12A-1.14(g) make any mention of, or include Subsection (i) in extending the bar to the Freeze Act relief. As noted above, neither the ADP law nor the Freeze Act reference, or except assessments performed in an ADP-participant county from the benefit of the Freeze Act. Taxation was authorized under the ADP law to "waive any provisions of statutory law and regulations" which would be inconsistent with the "intent and application of the ADP law. N.J.S.A. 54:1-104(g). It did not do so as to the Freeze Act. Since specific provisions control the general, any implication that the Subsection (i) annual reassessment becomes a district-wide reassessment after the interior of all properties are inspected, must cede to the specific provisions of the statute and regulations on the Freeze Act.

Note that the Borough's 20% inspections could skew its annual "reassessments," thus increasing the tax for property owners. For instance, if a property which was not inspected had been extensively renovated, and the assessor did not know about this either because there was no need for a permit (work was for ordinary repairs or maintenance, or less than 25% of the area to be covered by the work, or minor work, see N.J.A.C. 5:23-2.7; 23-2.17A,) or because a required permit (ibid., see also N.J.A.C. 5:23-2.14) was not obtained, but sold for a much higher price due to its renovated condition, all other properties would feel the brunt of the increased sale via an increased assessment per the assessor's testimony here. A correction would be made only if a property owner appealed the assessment, again per the assessor's testimony.

Any ambiguity in a statute imposing tax should be construed in favor of the taxpayer. See Fedders Fin. Corp. v. Dir., Div. of Taxation, 96 N.J. 376, 385 (1984) (where there is any ambiguity in a taxing statute, and the legislative history is wanting," then doubts are construed in favor of the taxpayer). Here, since the ADP law can be construed as a tax statute but does not address the Freeze Act, and the Freeze Act provisions are clear, any ambiguity whether the assessments of a taxing district in an ADP-participant county should be construed in favor of the taxpayer, thus, for providing relief under the Freeze Act. For this reason as well, the court does not read Subsection (i) as being excepted from the relief provided under the Freeze Act.

There appears to be the same ambiguous overlap in the Forms AFR and AFR-A, as they both list almost identical steps to be undertaken by an assessor in conducting a district-wide reassessment or an annual reassessment. These steps are similar to Taxation's guidelines on the elements of a "good reassessment program," which states as follows:

> [t]o avoid discriminatory treatment reassessments should cover the entire municipality in scope. A good reassessment program includes:
> • analysis of all recent real property sales, including a comparison of sales prices with assessed values of sold properties; identification of real property value trends;
> • a parcel by parcel review of all real property values;
> • review, revision and mapping of all unit land values,
> • entry of data into Computer Assisted Mass Appraisal System (CAMA)
> • gathering and utilization of pertinent income data; development and application of local cost conversion factors to improvements with adjustments to individual Property Record Cards;
> • review and adjustment of depreciation and obsolescence factors with changes to individual property records;
> • reconciliation and revised true value for each property;
> • placing revised taxable values on the Tax List for the year in which the reassessment becomes effective;
> • taxpayer notification of revised property values, with an opportunity for taxpayer review.

[Handbook for New Jersey Assessors, §904.][23]

Nonetheless, the list of assessment functions on the Forms does not require a conclusion that there is substantively no difference between a district-wide reassessment and an annual reassessment under Subsection (i). There is nothing to show that the steps outlined in either of the Forms are or should be inapplicable to annual assessments required by the first sentence of N.J.S.A. 54:4-23.

Further, and as noted above, any ambiguity in this regard as it impacts the application of the Freeze Act must cede to the specific language of that statute, and implementing regulations. In this regard, it must be noted that Form AFR does highlight the difference in a district-wide reassessment. It is titled "Application for Full Reassessment Program (Not for Annual Reassessments);" requires exterior and interior inspections of all properties; requires there be a taxpayer orientation program to discuss the "reassessment program and its purpose;" and requires taxpayers be sent an initial notice of the proposed assessed values for informal review of the same. None of these requirements are listed on Form AFR-A, indicating that the Subsection (i) annual reassessments are not district-wide reassessments for purposes of the Freeze Act.

The Borough argues that without the Freeze Act's inapplicability, the ADP law will be rendered ineffective, and therefore, the annual assessments must be regarded as annual district-wide reassessments. Implied here is that as several property owners are affected by the annual assessment changes, and not just the property owner who or which appealed, the Freeze Act relief should not apply. See Borough of Hasbrouck Heights v. Div. of Tax Appeals, 41 N.J. 492, 498-

[23] These are almost the same elements which were listed in Ennis, 13 N.J. Tax at 426-27 (quoting Handbook for New Jersey Assessors, §801.13 (3d ed. 1989)). They are also listed in MCBT's informal document in response to FAQ 5, "How are Property Values Established?"

99 (1964) (the "legislative purpose" of the Freeze Act is "to eliminate the harassment of requiring yearly appeals to be taken . . . when there has been no change in the value of the property," thus, the "raison d'etre" for this law "was the protection of the taxpayer, not the municipality.").

However, the court is reluctant to assume that the Legislature was unaware of either (1) the Freeze Act, which since 1993 has barred relief during a year of a complete revaluation or complete reassessment, or (2) the regulations which since as early as 1979, barred Freeze Act relief for district-wide reassessments. See 12 N.J.R. 359; 16 N.J.R. 1330(a) (June 4, 1984); 16 N.J.R. 2153(a). Thus, if the Legislature had felt that the mandated use of "cutting edge" software to set market-sensitive annual assessments equates to a "complete" or "district-wide reassessment" for purposes of the Freeze Act, it could have immunized such annual assessments from the Freeze Act. It did not. Indeed, the ADP law does not even use the phrase "annual reassessment." Then again, since it is experimental (with the ADP standing for Assessment Demonstration Program, not Annual Reassessment Program), the Legislature could be awaiting the investigative results before determining whether to enact further legislation immunizing the annual assessments in ADP-participant counties from the Freeze Act.[24] Cf. Regent Care, 362 N.J. Super. at 415 ("Performing a district-wide revaluation or reassessment every year would be the means best

[24] A bill called the "Technology-Based Real Property Assessment Transition Act," was introduced February 26, 2018 to "revise law governing assessment of real property," which would provide, among others, that there be a "mandatory district-wide annual reassessment requirement to set real property assessments at true value." See S. 2029; Sponsor's Statement to S. 2029 21-25 (Feb. 26, 2018). See also A. 3859 (May 7, 2018) (same). These bills would repeal the ADP law; change N.J.S.A. 54:4-23 to include the word "annually" to the first sentence and the first line of the second sentence; delete the second half of the second sentence and the third sentence pertaining to the full or partial reassessment and compliance plan; include provisions for a 10-year interior inspection schedule; and amend provisions on the computation and use of the average sales ratio. Neither bills was enacted into law. Notably, neither bill addresses the Freeze Act provisions vis-à-vis the "annual district-wide reassessment" they each require.

designed to meet" the constitutional mandate of uniformity in taxation," yet only "[p]eriodic revaluations or reassessments are feasible and are necessary to maintain uniform and non-discriminatory assessments") (citations omitted)); Bergen Cnty Bd. of Tax'n v. Borough of Bogota, 114 N.J. Super. 140, 145 (App. Div. 1971) ("In many municipalities the task of determining the true value of each piece of real estate within the district and thereafter continually making the many changes needed to maintain current accuracy far transcends the ability of a single assessor or board of assessors. Where this is so, a program of revaluation must, from time to time, be undertaken"), aff'g, 104 N.J. Super. 499 (Law Div. 1969).

Additionally, and especially due to the current lack of statutory provisions in this regard, the public is not on any notice that the Freeze Act provisions will not apply to an annual assessment set in taxing districts of an ADP-participant county.[25] Indeed, even the most recent law which enacted N.J.S.A. 54:4-23b, does not immunize the Borough's annual assessments from the Freeze Act's relief. See L. 2017 c. 306 (effective 2018, and enacted to revise "certain real property assessment practices and regulations"); Senate Comm. Substitute for S. 2836 (June 1, 2017). A finding of the Freeze Act's inapplicability in each tax appeal (or county board petition), after testing the credibility of an assessor's testimony is certainly not public notice of the law that the annual assessments in an ADP-participant county is a "reassessment," and that such a

[25] The court here is not addressing a district-wide reassessment allowed under the third sentence of N.J.S.A. 54:4-23 for taxing districts in an ADP-participant county, as to which the Freeze Act relief would not be available. Note that as to such a reassessment, there will be notice to the taxpayers that the assessment is a district-wide one, and an opportunity for taxpayers to meet informally to resolve assessment changes. See Form AFR. Cf. N.J.S.A. 54:4-38.1(b) (as amended by L. 2017 c. 306 § 8) that after an assessor sends a notice of the preliminary assessment to a taxpayer, the assessor or the county board shall, within 30 days notify the taxpayer of any change to the assessment "which has occurred as the result of a municipal-wide revaluation or reassessment of real property within the district." (the quoted portion being the amendment).

"reassessment" is "district-wide" or "complete" for purposes of the Freeze Act. This is especially where there is no evidence that the taxpayers are annually notified that the upcoming assessment is a reassessment same as a district-wide reassessment, or that the interior inspections of 20% of the properties are for purposes of a "reassessment-which-is-the-same-as-a-district-wide-reassessment," or that properties which were subject to the 20% interior inspection in a year will still be deemed to be within a "direct-wide reassessment." Rather, per the assessor, only regular assessment notices (Chapter 75 cards) are mailed to taxpayers, which further supports this courts findings that the Borough's annual assessments are simply those which required under the first sentence of N.J.S.A. 54:4-23. Of course all these factors do not invalidate the Borough's annual assessments, nor diminish the laudable goal of ensuring they are at current market value. Rather, they are being listed simply to show that the annual assessments do not fit within the concepts, purposes, equities, and mechanics of a traditional complete or district-wide reassessment.

CONCLUSION

For all of the above reasons, the court finds that the Borough has not overcome its burden to prove that the Freeze Act relief does not apply to the Subject for TY 2018.