

NOT FOR PUBLICATION WITHOUT APPROVAL OF  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

TAX COURT OF NEW JERSEY  
DOCKET NO. 007899-2016

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1959 HIGHWAY 34, L.L.C., :  
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 Plaintiff, :  
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 v. :  
 :  
 TOWNSHIP OF WALL, :  
 :  
 Defendant. :  

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Approved for Publication  
In the New Jersey  
Tax Court Reports

Decided: October 31, 2016

Paul Tannenbaum for plaintiff  
(Zipp Tannenbaum Caccavelli, L.L.C., attorney).

Jason A. Cherchia for defendant  
(O'Donnell McCord, P.C, attorney).

SUNDAR, J.T.C.

This is the court's decision on defendant's motion to dismiss plaintiff's complaint as untimely. The uncontested facts are that for tax year 2016, defendant ("Township") underwent a district-wide revaluation pursuant to which plaintiff's property located in the Township and identified as Block 821, Lot 14.011, was assessed at \$4,015,700. The Notice of Assessment was mailed to plaintiff on or about February 4, 2016. On April 27, 2016, plaintiff filed a direct appeal to this court challenging the assessment. The Township then moved to dismiss the complaint since it was not filed within 45 days of February 4 as required by N.J.S.A. 54:3-21(a)(2).

Plaintiff opposed the motion claiming that N.J.S.A. 54:3-21(a)(2), which changed the deadline to file tax appeals in counties participating in the Assessment Demonstration Program

(“ADP”), never addressed district-wide revaluations, and in any event, applied only to appeals from judgments of a county board of taxation, not to direct appeals to the Tax Court. Consequently, plaintiff argued, the May 1 deadline for a district-wide revaluation contained in N.J.S.A. 54:3-21(a)(1) applied, which rendered its complaint timely. Any other result, per plaintiff, would constitute a violation of its due process and equal protection rights.

Plaintiff alternatively argued that it was not notified of the new deadline for direct appeals to the Tax Court since the instructions on the Notice of Assessment on how to file direct appeals referenced the Tax Court’s website. However, and once accessed, the only information on filing direct appeals would be to click on the link for the court rules, and those rules state that an assessment from a revaluation must be appealed by May 1. Plaintiff contended that the Notice of Assessment therefore violated N.J.S.A. 54:4-38.1, since that statute explicitly required an inclusion of instructions on how to appeal an assessment.

For the reasons explained below, the court finds that N.J.S.A. 54:3-21(a)(2) is plain in its requirement that all direct appeals to the Tax Court must be filed by the later of April 1 or 45 days from the date of bulk mailing of assessment notices, regardless of the type of action that generated the assessments, *i.e.*, whether imposed by a reassessment or a district-wide revaluation, having left to the participant-county the implementation of the necessary mechanics and procedures for imposing the assessments. However, the court finds that the instructions on the Notice of Assessment referencing the New Jersey court’s website failed to adequately notify taxpayers of the requirements for filing a direct appeal to the Tax Court, including the deadline to do so. This error jeopardized plaintiff’s due process rights and violated the mandate in N.J.S.A. 54:4-38.1. Therefore, the court denies the Township’s motion to dismiss the complaint as untimely.

## ANALYSIS

In 2013, the Legislature enacted the ADP 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. See N.J.S.A. 54:1-104. The ADP is an investigative effort to legislatively achieve cost-cutting, efficiency, and budget savings. See N.J.S.A. 54:1-102 (ADP law meant 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”).

In furtherance of this intent, the ADP 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) (the ADP is established “to evaluate the efficacy and functionality of” the assessment process “pursuant to a revised assessment, and assessment appeal, calendar”); Statement to S. 1213 (Jan. 23, 2012) (the ADP “specifically address[es] the systemic costs” attributable to “successful assessment appeals”).

As part of the law, the Legislature made changes to several provisions of the tax statutes. One such change was to amend N.J.S.A. 54:3-21(a), the law on establishing tax appeal deadlines. The provision was amended by the addition of new paragraph (2) as follows:

With respect to property located in a county participating in the [ADP] established in [N.J.S.A. 54:1-104] . . . , a taxpayer feeling aggrieved by the assessed valuation of the taxpayer's property . . . may on or before January 15, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever date is later, appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer, or taxing district, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever date is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$ 1,000,000.

If a petition of appeal is filed on January 15 or during the 19 days next preceding January 15, or a complaint is filed with the Tax Court on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.

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[N.J.S.A. 54:3-21(a)(2)]

The legislative history notes that the proposed law “revises the statutory dates for the assessment of real property . . . to implement the [ADP’s] provisions concerning the re-scheduling of the assessment appeal process.” Statement to S. 1213, supra. Since appeals under the currently existing appeal deadline of April 1, or May 1 in case of a district-wide revaluation or reassessment (see N.J.S.A. 54:3-21(a)(1)<sup>1</sup>), were generally decided by a county board of taxation (which also sets the tax rate after the assessor submits a tax list on January 10 of the tax year, see N.J.S.A. 54:4-35(a)<sup>2</sup>) “by the end of July,” successful appeals “that late in the tax year,” reduced the assessment, thus, the “municipal tax base,” which caused “under-collection of property taxes” needed to fund operations of and for the current year. Ibid. See also Senate Budget and Approp. Comm., Statement to S.1213 (Sep. 20, 2012); Assemb. Approp. Comm., Statement to S. 1213 (Dec. 13, 2012).

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<sup>1</sup> Prior to the amendment by the ADP law, N.J.S.A. 54:3-21(a) did not have a subsection.

<sup>2</sup> Prior to the amendment by the ADP law, N.J.S.A. 54:4-35 did not have a subsection.

The Legislature therefore proposed to change and accelerate the assessment deadlines, and mailing of assessment notices, which in turn allowed an acceleration of the appeal deadlines. The legislative history includes a chart with three columns, “Description of Function;” “Current Date;” and “Proposed Date for All Municipalities;” respectively. Ibid. The date for the “Assessment Appeal Filing Deadline,” tabulates “April 1; May 1 in municipalities wherein revaluation of real property has occurred,” as current, and “January 15” as proposed. The date for “Assessment Appeals Heard,” notes “May, June, and July,” as current, and “February, March and April” as proposed. Ibid. Neither row appears to indicate or address direct appeals to the Tax Court. Ibid.

Plaintiff argues that based on this history, it is clear that the Legislature was only concerned with accelerating appeals at the county board level, and inadvertently forgot/omitted to address appeal deadlines for towns which had a district-wide revaluation. It points out that this conclusion is also evident from a comparison of new subsection (a)(2) with the current subsection (a)(1) (prior subsection (a)), since the former virtually mirrors the latter in all aspects except the language on the appeal deadline for revaluations.

While a reasonable argument, there are several countervailing factors militating against such a conclusion. First, the plain language of the ADP law shows that the Legislature was cognizant of the Tax Court when amending appeal filing deadlines. That statute states:

A collaborative system of real property assessment would also benefit municipalities by reducing the number of successful property assessment appeals filed annually with a county board of taxation and the Tax Court, thereby protecting the funding of municipal budgets through property tax dollars from the impact of successful property assessment appeals, which usually require the refund of excess property taxes paid by a taxpayer and impact the local budget by reducing the amount of property tax dollars available to fund municipal operations.

[N.J.S.A. 54:1-102(b) (emphasis added).]

Second, the Township’s argument is more persuasive that the Legislature did not intend to differentiate between the methodologies of assessment, i.e., between a reassessment and a revaluation, and therefore did not need to provide differing appeal deadlines. Indeed, the Legislature left the details, mechanics, and procedures of assessment to the county tax administrator, subject to approval by the county board of taxation, and review by the Division of Taxation and the Division of Local Government Services, the latter two agencies ensuring that the plan complied with “State law.” N.J.S.A. 54:1-104(c)(2).<sup>3</sup> Lest there be any ambiguity in this regard, the Legislature further explicated that the ADP must “operate under all statutory requirements and pursuant to all statutory dates and time frames concerning the assessment of real property in the State, as those statutory dates and time frames have been amended pursuant to the provisions.” Ibid. (emphasis added). The emphasized language also evidences that the Legislature chose to amend the appeal deadlines, and to use April 1 for direct appeals (unless the 45 days from the bulk mailing was later) against a challenge to an assessment imposed pursuant to the ADP, regardless of how the assessment was effectuated.

The Legislature’s reasons for the changes are explicitly stated and realistically relate to the goals sought. To an extent, the goals are similar to another county-based real property assessment reform program, called the “pilot program” in Gloucester County. See N.J.S.A. 54:1-104(a) (one of the stated goals of ADP is 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

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<sup>3</sup> Monmouth County participates in the ADP. The Monmouth County Board of Taxation (“County Board”) established a 5-year Implementation Schedule in this regard whereby for each year starting with 2014, in each of the 53 municipalities, the assessments were to be either (1) “revised to market value by assessor,” (2) “revised by assessor to current ratio,” (3) “revised to market value by traditional revaluation,” or (4) “revised to current ratio – revaluation pending for future years.” The County Board’s website contains a detailed explanation of the ADP, and includes the 5-year Implementation Schedule. See Assessment Demonstration Program, Monmouth Cty. Bd. of Taxation, <http://co.monmouth.nj.us/page.aspx?ID=134> (last visited September 28, 2016).

two different methods,” and decide whether “the current statutory system of real property assessment function should be revised Statewide”). Gloucester County’s pilot program is 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 revaluation “is often postponed beyond what is prudent, causing some property taxpayers in a municipality to subsidize other property taxpayers for many years”). To this end, 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 and deputy assessor would perform all real property assessment functions, including notifying the county tax board of the need for, or execution of, revaluations or reassessments (“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); 1-92. See also Statement to Assemb. 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”). Consequently, the Legislature was well aware of the concept of a revaluation.

In this regard, law also provides that in furtherance of the ADP, a county board can “compel the implementation of a revaluation or reassessment of real property in any municipality in the demonstration county” under existing statutes and regulations. N.J.S.A. 54:1-104(f). A taxing district had the right to appeal this determination and order for a revaluation to the Tax Court within 45 days of the approval by the Director of the Division of Taxation of the county tax board’s order requiring the revaluation or reassessment.” Ibid. The legislative history also notes that a county board must “compel” implementation of a revaluation or reassessment. See Senate Budget

and Approp. Comm., Statement to S. 1213, supra. Cf. N.J.S.A. 54:3-13; N.J.A.C. 18:12A-1.14(b) (a county board of taxation can order a taxing district to revalue all real properties therein, and implement such revaluation upon approval by the Division of Taxation). Thus, mandating an April 1 deadline (or 45 days of the bulk mailing notice, whichever is later) for direct appeals rather than the May 1 deadline under N.J.S.A. 54:3-21(a)(1), whether the assessment is a result of a reassessment or revaluation, does not appear to be a legislative oversight.

The above reasoning is not altered by the legislative history of N.J.S.A. 54:3-21(a)(1) on the decision to use a May 1 appeal deadline for assessments due to a district-wide revaluation. When introduced on March 2, 2006, S. 1519 simply provided that a county board could extend appeal deadlines (which as of the date of the bill was the later of April 1 or 45 days from the bulk mailing date of assessment notices) for a taxing district, upon application of its assessor, “for any year in which a municipal-wide revaluation is implemented.” The Governor returned the same because the proposed bill: (i) provided an appeal opportunity only to the taxing district; and (ii) left the appeal date open ended, thus there was “some ambiguity about the timetable for challenging increases in assessed valuations.” See Governor’s Recommendations to S. 1519 (Jan. 7, 2008). Addressing these concerns would “help to ensure additional fairness, increased flexibility, and clear expectations for timely appeals.” Ibid. Therefore, the Governor’s proposed language is presently reflected in N.J.S.A. 54:3-21(a)(1) (except that subsequent legislation changed the assessment amount required for a direct appeal to \$1,000,000).

Nothing in the legislative history of the law relating to the May 1 deadline indicates that the Legislature had the same or similar concerns as it did when enacting the ADP law. There is nothing to show that any of the assessment function dates (submission of the tax list by the assessor, determination of the county ratio by the county tax administrator, review of the

equalization table by the county tax board) were extended or otherwise changed on grounds the assessment was or would be a product of a district-wide revaluation. In other words, there was no co-relation to the May 1 appeal deadline and those functions in N.J.S.A. 54:3-21(a)(1) (or the prior N.J.S.A. 54:3-21(a)).<sup>4</sup>

It is true that the Governor, in his recommendation, appreciated the bill's sponsors' "good-faith efforts to increase the fairness and flexibility of the process governing appeals" for revaluation years, and shared their "goal" that "taxpayers facing increased valuations have clear and reasonable opportunities to challenge those increases as economically unjustified." Governor's Recommendations to S. 1519, supra.<sup>5</sup> However, none of those goals were sacrificed when the ADP law provided an April 1 deadline for direct appeals to the Tax Court (or 45 days from the bulk mailing notice, if that was later) whether the appellant is a taxpayer or a taxing district. Taxpayers have the same rights to receive a Notice of Assessment, see N.J.S.A. 54:4-38.1, and the same ability to legally challenge the assessment. Cf. Centorino v. Township of Tewksbury, 18 N.J. Tax 303, 310-11 (Tax 1999) (N.J.S.A. 54:4-38.1 required assessor to provide a Notice of Assessment so that taxpayers would be "aware of their assessment" and "preserve their

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<sup>4</sup> This is unlike cases of added and/or omitted assessments where because of the time to complete either of those, the appeal deadlines differ. See generally N.J.S.A. 54:4-63.11; 54-63.39. Neither of these statutes were amended by the ADP law since added or omitted assessments are not considered regular assessments (i.e., those imposed on an annual basis, including those imposed pursuant to a district-wide revaluation or reassessment).

<sup>5</sup> No such due process or fairness concerns were explicated when S. 1519 was introduced. See Statement accompanying S. 1519 ("bill would permit a county board of taxation to extend the filing deadline for tax appeals by" an assessor "for any year in which a municipal-wide revaluation has been implemented"). An amendment to the bill only deleted a proposed provision of retroactivity. See Senate Community and Urban Affairs Comm., Statement (May 21, 2007). The increased flexibility alluded to in the Governor's Recommendation would make more sense applied to an assessor, since he or she would have to review several properties in the taxing district before deciding to appeal, than to a taxpayer who or which would be normally concerned only with the increased assessment upon the taxpayer's property. However, to level the playing field, the Governor chose a May 1 date for both. Here, the Legislature chose an April 1 (or 45-day limit) for both taxpayers and taxing districts for property located in an ADP participating county.

appeal rights,” much before tax bills are sent and tax rates are struck), rev’d on other grounds, 347 N.J. Super. 256 (App. Div. 2001), certif. denied, 172 N.J. 175 (2002).

In tax matters, the Legislature has “broad latitude in creating classifications and distinctions,” and enjoys the “greatest freedom” in this regard. Garma v. Township of Lakewood, 14 N.J. Tax 1, 11-12 (Tax 1994) (citations and quotations omitted). Consequently, an attack to the constitutionality of a tax statute requires “the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.” Id. at 12 (citations and quotations omitted). In addition, where, as here, there is no impairment of a fundamental right nor allegation of even a suspect/semi-suspect classification, a tax statute will pass constitutional muster and overcome allegations of equal protection violations, if it has a rational basis and the “state policy” in differing treatment is “plausible.” Verizon New Jersey Inc. v. Borough of Hopewell, 26 N.J. Tax 400, 424-425 (Tax 2012) (citations and quotations omitted). Thus, there is no violation if a different treatment is justifiable “on any reasonably conceivable state of facts” regardless of the fact that “the classification may be mathematically imperfect or that it results in some inequities in practice.” Id. at 425 (citations and quotations omitted). An “[a]dministrative convenience can justify a tax-related distinction.” Ibid. (citations and quotations omitted).

The ADP law’s appeal deadline for direct appeals comports with its accelerated deadlines of other assessment-related functions, and the other deadlines relative to setting the tax rates. There is no equal protection violation since the deadline applies to both taxpayers and the taxing district. Notably, in both ADP participating counties and non-ADP participating counties, taxpayers and the taxing districts have the same later 45-day limit from the bulk mailing of the Notices of Assessment to file an appeal. However, and in contrast to an ADP participating county,

properties in a non-ADP participating county wherein assessments are imposed due to a district-wide revaluation do not have the later 45-day limit. Just as nothing prevents a taxpayer in a non-ADP participating county to file a direct appeal against an assessment from a district-wide revaluation much before the May 1 deadline, nothing prevents a taxpayer in an ADP participating county to file a direct appeal much before the deadline of April 1 or the later 45-day period. Plaintiff has not shown that its ability to file a timely appeal was in fact destroyed or jeopardized by the ADP law in any manner. Cf. Center for Molecular Med. & Immunology v. Township of Belleville, 19 N.J. Tax 193, 198 (App. Div.) (“[r]eceipt of notice from the tax assessor as mandated by N.J.S.A. 54:4-38.1 the day before the expiration of the statute of limitations in N.J.S.A. 54:3-21 is not consistent with due process” and is “unfair and unrealistic to require” a timely appeal “within twenty-four hours or less or suffer the consequences of” being unable to challenge a significant assessment), certif. denied, 165 N.J. 677 (2000).

For all of the above reasons, the Legislature’s choice of accelerating the assessment appeal deadlines are rationally related to the expressed goals of saving time, money, and more importantly, achieving uniformity in taxation among municipalities in a county. The court does not find persuasive plaintiff’s contentions of equal protection violation, or its contentions that the Legislature forgot to address direct appeals to the Tax Court in cases of district-wide revaluations in ADP participating counties.

However, plaintiff’s grievance of due process violations because it was not fairly apprised of its direct appeal rights in the Notice of Assessment is meritorious. The ADP law also amended N.J.S.A. 54:4-38.1 which requires assessors to notify taxpayers of the current tax year’s assessment, and which mandates that such notice “shall contain information instructing taxpayers on how to appeal their assessment.” The amendment included a new subsection (b) to address the

type of, and time to provide, an assessment notice for townships in an ADP participating county. N.J.S.A. 54:4-38.1(b) (an assessor must mail a preliminary assessment to each taxpayer by November 15 of a pre-tax year). The mandate on including appeal information remained unchanged, thus, the assessment notice must still “contain information instructing taxpayers on how to appeal their assessment.” Ibid.

There are no regulations on exactly what information should be included as an instruction. The front portion of the Notice of Assessment received by plaintiff included a notation “Revaluation District,” and directed the recipient to the “other side” of the card for “appeal information.” The other side of the card has “appeal instructions” for each of two options. Option one is to file an appeal with the County Board as to which “Forms, Instructions, and a guide” were available at a web address, or at the assessor’s office. The appeal deadline is provided in boldface as “on or before January 15, 2016 or 45 days from the date mailed.” The second option is to file an appeal directly with the Tax Court if the assessed value exceeds \$1,000,000. The taxpayer is directed to “<http://www.njcourtsonline.com> Select Tax Court” for “more information” in this regard. Absent on the card is any inclusion of the appeal deadline.

The link provided for information on filing appeals to the Tax Court is the correct address for the New Jersey courts online ([www.njcourtsonline.com](http://www.njcourtsonline.com)). Contrary to plaintiff’s contention, this is an accessible website. However, when “Tax” is selected from the drop-down menu of “Courts,” the page does not display a deadline to file direct appeals. Rather, several informational links are provided. If the taxpayer somehow knew or guessed that the appeal deadline would or could be found in the court rules and clicked on this link, it would open the page “Tax Court of New Jersey, Part VIII Handbook.” The Handbook reproduces, in full, the court rules governing practice in the Tax Court. The “Time for Filing Complaint” is in R. 8:4-1. Subsection (a)(4) does

not indicate any different date for challenging assessments in an ADP-participating county. Rather, it states that if there has been a district-wide revaluation, then direct appeals under “N.J.S.A. 54:3-21” must be filed on or before May 1 of the tax year.” R. 8:4-1(a)(4).

Fundamental due process requires “adequate notice,” among others. Centorino, supra, 10 N.J. Tax at 316 (citation and quotation omitted). In this connection, a notice must “reasonably . . . convey the required information . . . and it must afford a reasonable time for those interested to make their appearance.” Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). This court holds that providing the time limit to file an appeal is a crucial aspect of the requirement in N.J.S.A. 54:4-38.1(b) that a Notice of Assessment include instructions on “how to appeal” assessment.

Here, plaintiff was simply not, and could not be enlightened as to the filing deadline by using the link provided on the Notice of Assessment. The Notice of Assessment sent to plaintiff was defective since it did not provide adequate information on the appeal deadline for direct appeals. A notice that is defective violates due process. While it is not the assessor’s fault that R. 8:4-1(a) does not address appeals of assessments in ADP-participating counties, it does not obviate the statute’s requirement that a taxpayer be given fair and proper notice of filing appeals. See, e.g., Gastime, Inc. v. Director, Div. of Taxation, 20 N.J. Tax 158, 168-69 (Tax 2002) (tax assessment notice which contains misleading information cannot be held against the taxpayer even if the error was “inadvertent”). Therefore, the court will extend the statute of limitations as applied to plaintiff and entertain the merits of plaintiff’s complaint.

## **CONCLUSION**

The time to file direct appeals from assessments in an ADP participating county is as set forth in N.J.S.A. 54:3-21(a)(2). However, the Notice of Assessment did not fairly apprise plaintiff

of its time to file a direct appeal. Therefore, the Township's motion to dismiss the complaint as untimely filed is denied.<sup>6</sup>

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<sup>6</sup> The Township filed dismissal motions in three other cases for the same reasons as in the instant matter where the Township is the defendant. Those are 1969 Route 34, L.L.C. v. Township of Wall, (Docket No. 007896-2016); 1967 Highway 34, L.L.C. v. Township of Wall (Docket No. 007898-2016); and Commercial Realty & Resources Corp. v. Township of Wall (Docket No. 007918-2016). The first two plaintiffs were represented by the same counsel herein. The third case has the Law Office of Michael A. Vespasiano, as plaintiff's counsel. All four motions were heard together. The opinion issued in this case will control, and apply to the other cases except as to certain facts (property identification; assessment amount; and complaint filing date).