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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

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JUDGE

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Re: JOVSIM L.L.C. v. City of New Brunswick
Block 86, Lot 35.02
Docket Nos. 011827-2015; 004211-2016

Dear Counsel:

This matter is before the court on plaintiff's motion for summary judgment for an Order to vacate the judgment of the Middlesex County Board of Taxation ("County Board") which increased the 2015 assessment for the above-captioned property ("Subject") from $1,500,000 to $3,500,000. Plaintiff argued that a rollback to the original assessment is the only available remedy because the assessor filed a petition to the County Board impermissibly seeking the increase based solely on the Subject's sale in December 2014 for $9,370,000. Plaintiff contended that the 2016 assessment should be similarly rolled back since it was a carry-forward of the 2015 illegal spot

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assessment. Plaintiff also sought dismissal of defendant's counterclaim as untimely because it did not plead a challenge to the County Board's judgement.

Defendant ("City") opposed the motion with a detailed certification from its assessor contending, among others, that the Subject's assessment was increased as a result of the County Board' determination of value, and not due to the assessor's unilateral imposition of an increased assessment. The assessor also certified to the reasons for his conclusion of a possible under-assessment, which in turn, propelled his recommendation to the City's Special Tax Counsel to file a petition to the County Board.

For the reasons below, the court finds that the City's filing of a petition before the County Board is not an indirect illegal spot assessment. Plaintiff's summary judgment motion is denied. The matters will be set for a trial on the merits of the issues on valuation and discrimination.

FACTS AND PROCEDURAL HISTORY

1. Subject's Assessment

The Subject is a Class 4C property (apartment complex). It was built in June 2012, and was one of the few student housing apartment buildings in the City. A three-story wood frame structure, it has 25,244 square feet ("SF") of above grade finished area, and subterranean parking of 8,392 SF. There are 32 two-bedroom, and 2 one-bedroom student housing apartment suites. In 2015, it housed 66 students. It is located close to the Queen's campus of Rutgers University. It is one of the eight similar, newly constructed buildings, all of which are used to provide student housing with security and onsite underground parking. All eight buildings are exempt from rent control for 30 years from the year of completion.

For tax year 2012, the Subject was assessed at $1,500,000 (prorated accordingly for a portion of 2012). The average ratio for the City for 2012 was 39.87%, which provided an implied true value of the Subject as $3,762,000 (rounded).

For tax year 2015, the Subject continued to be assessed at $1,500,000 ($510,000 allocated to land and $990,000 allocated to improvements). The average ratio for the City for 2015 was 38.72%, which provided an implied true value of the Subject as $3,873,970 (rounded).

Plaintiff purchased the Subject on December 18, 2014 for $9,370,000. The sale deed was recorded January 8, 2015.

On January 7, 2015, the City Council passed a Resolution authorizing the assessor to file tax appeals in cases where the assessor, "in his judgment," found an assessment needed correction (independent of appeals filed by taxpayers). The Resolution also authorized the assessor and Special Tax Counsel to file counterclaims "when deemed necessary and appropriate" in matters pending before the County Board or the Tax Court. The City Council passed a similar Resolution in January 2016.

In March 2015, the assessor became aware of the Subject's sale when he received and reviewed the sale deed. Thereafter, he deemed the Subject's assessment as not reflective of its true value, given its sale price. He then requested the City's Special Tax Counsel to petition the County Board and seek a correction of the 2015 assessment. See infra Assessor's Certification.

On March 30, 2015, the City filed a petition to the County Board seeking an increase of the 2015 assessment to $3,600,000 on grounds the Subject was "under-assessed as is evident from [its] recent sale." In Section II (Comparable Sales), the only property listed was the Subject. The petition showed the City as the named petitioner. The contact information (mailing address, telephone number and e-mail address) was that of the City's assessor. The City's Special Tax

Counsel's name and address was listed as the "person or attorney to be notified of the hearing date and judgment." The petition was signed by the City's Special Tax Counsel.

On the same day, the City filed eight other petitions to the County Board seeking increased assessment for eight other properties in the City because they were "under-assessed as is evident from [their] recent sale[s]" in 2014. Of these, two were Class 4C (as the Subject), three were Class 4A, and three were Class 2. In each petition, Section II (Comparable Sales) listed only the petitioned property.

On April 21, 2015, the County Board sent a Notice of Hearing advising the plaintiff that the City's "municipal assessor has filed an appeal . . . to issue a change in assessment," and was "requesting" an assessment revision to $3,600,000.

A hearing was held on June 12, 2015. Both parties appeared. Only the assessor provided testimony. See infra Assessor's Certification. On the same day, the County Board entered a judgment increasing the assessment for 2015 to $3,500,000 using judgment code 1E with the explanation "Assessor Recommendation." The City's petitions as to the other eight properties were settled, thus, not affirmed by the County Board. All eight assessments were increased.

2. Tax Court Complaint

Plaintiff filed a timely complaint challenging the County Board's judgment with this court on August 11, 2015. On August 27, 2015, the City filed an Answer and Counterclaim (which was uploaded electronically by the court's staff on August 28, 2015) with the Case Information Statement ("CIS"). The first count of the counterclaim was that the property's true value exceeded the assessment, and the second count alleged discrimination against the city. Paragraph 2 of the first count alleged that the property's 2015 assessment was $1,500,000. In paragraph 4 of the first count, the City alleged that it was seeking relief under "N.J.S.A. 54:3-21 whereas the true value of

said property exceeds the assessed valuations of said properties." On the CIS, the City had checked the case type as an "Appeal from County Tax Board Judgment."

For tax year 2016, the assessor set the assessment at $3,500,000. He stated he did so due to the mandates of the Freeze Act. See infra Assessor's Certification. Plaintiff timely filed a direct appeal to this court. The City did not file an answer or counterclaim.

3. Discovery

On November 9, 2015, plaintiff propounded standard and supplemental interrogatories upon the City. On November 30, 2015, the City responded to the same. In answer to Question 5, which asked for any document which the City had knowledge of and "which relates to or bears upon the subject matter of this appeal," the City stated that it was unaware of any documents "other than the property record cards." The City acknowledged that it would supplement the response since discovery was ongoing. On July 18, 2016 (after plaintiff filed the instant summary judgment motion), the City amended its answer to this question by providing copies of the City's Council's January 2015 and 2016 Resolutions.

Questions 11 and 12 asked for a complete copy of "any municipal appraiser's," and the "municipal tax assessor's" files and business records relative to the Subject for 2013-2015, including information relied upon by these individuals "in support of a challenge to the assessment" of the Subject. The City offered an inspection of the assessor's file at the assessor's office subject to its objection of attorney-client privilege.

Question 15 asked for a list of all properties as to which the City had filed either a petition to the County Board or a complaint to the Tax Court challenging the 2015 assessment. The City directed plaintiff to the attached property record card of the Subject "[t]o the extent it is responsive to his (sic) interrogatory."

Questions 16 and 17 sought the analysis prepared by or for the City, and any data used to determine that the Subject was under-assessed, and to determine the Subject's market value as of the assessment date, resulting in the filing of the 2015 petition to the County Board or a complaint to the Tax Court challenging the 2015 assessment. The City directed plaintiff to the attached property record card of the Subject "[t]o the extent it is responsive to his (sic) interrogatory."

4. The City's Appeal of the 2016 Average Ratio

On November 6, 2015, the City (through different counsel) filed a complaint with this court challenging the Division of Taxation's ("Taxation") State Equalization Table and Certification of Average Ratios. Specifically, the City alleged that two sales should not have been included in the sales ratio study. One was the Subject's sale. The other was a December 20, 2014 sale of property located on 130 Easton Avenue for $10,000,000. This property was a student housing apartment, as the Subject, and was constructed by the same developer using the same building plans as the Subject. Unlike the Subject, this property has a retail component on the first floor.

The City's allegations were that these properties' sale prices "deviate too greatly" from the sales ratios of other useable properties in the City, thus, "distort" the assessed-to-true-values of properties. Further, the assessor's inspection showed that they were not arms-length transactions. The City therefore challenged the 2016 average ratio of 35.05% as erroneous.

On January 27, 2016, this court received a settlement whereby Taxation excluded the two sales under the non-usable ("NU") category 26,[1] and increased the City's average ratio to 39.76%, On January 28, 2016, this court issued a judgment revising the average ratio for the City in accordance with the stipulation.

[1] These include "sales which for some reason… are not deemed to be a transaction between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell." See N.J.A.C. 18:21-1.1(a)(26)).

5. Revaluation

The City conducted a district-wide revaluation in 1990 for tax year 1991. The City's average ratio stayed above 90% until 2001. The ratio began to thereafter fall (and was 75.23% in 2003) while the coefficient of deviation was rising. For 2006, the City's average ratio fell to 45.97%. The City postponed its plan for revaluation for various reasons. See infra Assessor's Certification. The City began to undergo a revaluation in 2016 for tax year 2017.

6. The Instant Motion

Plaintiff filed the instant summary judgment motion in June 2016. The City filed an opposing brief and the assessor's certification, which included the two municipal resolutions delegating to the assessor the authority to file petitions at the County Board and file counterclaims (through Special Tax Counsel) at the Tax Court.

In its reply, plaintiff asked the court to disregard the City's opposition because inasmuch as it did not contain a Response to plaintiff's Statement of Material Facts not in Dispute, the same were deemed admitted.[2] Additionally, it noted that the assessor's certification was replete with assertions of data that he had considered when deciding to file a petition to the County Board, yet the City had provided none of this information to plaintiff despite plaintiff's explicit discovery requests for the same (the two Resolutions having been provided only after the summary judgment motion was filed). However, argued plaintiff, even if the assessor's certification was taken as true, summary judgment in plaintiff's favor was still viable. It noted that the assessment, whether a result of an appeal to the County Board, or placed voluntarily by the assessor, was still illegal discrimination as a spot assessment. It was also an "arbitrary exercise of municipal authority,"

[2] The City immediately filed a response to plaintiff's Statement of Material Facts not in Dispute, included its own Statement of Material Facts, and sought the court's indulgence to accept the same as timely filed. The court provided plaintiff until November 9, 2016 to file any reply to the City's Statement of Material Facts. None was filed.

since the City's Resolutions blurred the lines between the authority of an assessor and the City to file the appeal. Further, use of only the County Board as a venue was a coercive attempt to procure quick settlements.

In response to the court's questioning during oral argument, the City filed a letter stating that the assessor was advised by the County Board that pursuant to the holding in In re Appeal of Monroe Township, 16 N.J. Tax 261, 272-73 (Tax 1996), a municipality lacks standing to file an appeal under N.J.S.A. 54:3-21 seeking an assessment reduction. The City also filed an amended answer and counterclaim, amending paragraph 2 of the first count to the counterclaim to note that the Subject was assessed for 2015 at $1,500,000 and that the County Board issued a judgment on June 12, 2015 increasing the assessment to $3,500,000. It showed the increased assessment's allocation to land and improvements, and specifically referenced the County Board Judgment for the Subject. It did not amend paragraph 4 of the first count.

THE ASSESSOR'S CERTIFICATION

The assessor certified that the Subject was unique, not only as a new construction but also as a new type of private student housing, a small subset of eight new buildings which provide attractive student housing with security and on-site underground parking. Further, the Subject was not among the types of apartments commonly found in the City (or even other towns), and was fully exempt from Rent Control for 30 years. For tax year 2012, he stated that he valued the newly completed improvements based on income estimates provided by the developer, corroborated with rental data from older competing properties in the immediate area of the Subject, which was tested with the replacement cost estimates for the building and land cost. There were no comparable sales of the Subject's type.

He stated that in March 2015, he became aware of the Subject's sale when he received and reviewed the sale deed for the Subject. Review of sale deeds is a routine procedure to note changes in ownership, establish sales ratios used in determining school aid, and examine market trends. Since the Subject's sale price was almost thrice its equalized assessed value, and almost six times the assessment, the assessor claimed that he "immediately began to investigate the validity of the sale and [of] the assessment" vis-à-vis the equalized value, since only one of the two could be the credible market value. He asserted that he was unable "to corroborate the [s]ale [p]rice . . . even after using the property owner's own recent actual income, and applying recent valuation factors derived from the local market," which made him "less confident in the" Subject's sale price. Rather, the first two years of the Subject's operation and the "range of rates and multipliers derived from analyzing rental data and sales of competing college rental properties in the subject neighborhood," showed that the Subject's value was about 80% of its purchase price.[3] He emphasized that this fact, i.e., his calculation of the Subject's value equaled about 80% of the purchase price, should not be inflated or conflated out of context, and deemed to somehow be relevant to the Subject's assessment. Rather, it was a formulaic expression for ease of communication.

The assessor noted that since the deadline to change the tax list had passed, and the time to file appeals was nearing its end, he requested the City's Special Tax Counsel to appeal the Subject's assessment before the County Board, the "only available avenue" for correcting the

[3] The assessor stated that in 2015, the students at the Subject were paying about $850 per bed, per month, a number he never "contemplated" in 2012 "when no similar rents on a per bed basis were known" to him (although he also certified that in 2012 "students in the local market would typically pay" about $450-$550 per-month per-bed, in a shared bedroom with common facilities, or $650 per-month in a private unit or studio). This provided $750,000 annual actual gross income and $600,000 net income (0% vacancy, "less than 1% collection losses and . . . 20% of gross income in expenses [for] . . . management and maintenance,"), which when compared to its sale price yields 12.5 annual rent factor, the highest in the neighborhood.

assessment, and "protect[ing] the rights of the City's other taxpayers." He asked for an increased assessment of $3,600,000 because it was the best number he could support vis-à-vis the purchase price (as equalized), but hoped that the County Board would either ascertain the Subject's value at a number which would be higher than the equalized assessed value but lesser than purchase price, or leave that task to this court by dismissing the petition without prejudice.

The assessor certified that at the County Board hearing, he testified to the Subject's sale price which reflected the Subject's true value (as equalized) at $3,875,000, that the disparity in this regard triggered his research into the sale deed, and since he was unable to locate any data from the local market to support the sales price, he ultimately recommended an appeal. He stated that he also testified as to the nature of the building (new type of student housing), and that he did not have any recent or historical market data for this type of property nor historical income/expense for the Subject when he initially assessed it in 2012. He stated that he did not know that the estimated income provided to him by the developer was much lower than the actual income when the Subject was sold. He noted that he had hoped for some information or clarification as to the high purchase price (such as special circumstances, or relationship between the parties) since he did not believe the price as reflective of the Subject's true value, but received no such information since plaintiff did not present any evidence or opposition by way of a contrary market value. He stated that he told the County Board that the requested judgment amount on the City's petition was wrongly rounded since it would provide an equalized value greater than the sale price, and that $3,500,000 would provide $9,039,256, a value closer to the sale price.

According to the assessor, plaintiff's only argument was that the County Board should dismiss the petition, or alternatively, dismiss the same without prejudice so the Tax Court could decide the issue. The assessor apparently told the County Board he would not object to the latter

alternative since it would allow him to pursue, in more detail via an expert report, and with more time, the issue of the Subject's true value. However, the County Board concluded a value of $3,500,000. He stated that due to the mandates of the Freeze Act, he used the County Board's judgment amount as the assessment for 2016.[4]

As to the lack of revaluation in the City since 1991, the assessor claimed that a flat stable market rendered the same unnecessary until 2001, since the City's average ratio remained above 90%. However, when the ratio started to decline, he stated that he began to discuss the need for revaluation in the fall of 2003 and received the necessary support from the City's officials with resources in 2004. Overhauling the City's tax maps into a digital environment took about two more years (at a cost of over $250,000). By then, the assessor recommended a different but more established vendor, with a revaluation in 2010 as the goal. In February 2009, he stated, the City's digitally created Tax Maps were certified by the State. However, due to the economic downfall in place by then, the City decided to postpone the revaluation. In the fall of 2014, the assessor claimed to have re-initiated the need for revaluation, obtained a re-certification of the Tax Maps in February 2016, and revaluation commenced in April 2016. As of March 2015, when he was reviewing the sale deed for the Subject, the 2016 revaluation was not finalized, thus, he said, the same was not a certainty.[5]

As to plaintiff's contention that the Subject's assessment should have been changed through a compliance plan under N.J.S.A. 54:4-23, the assessor maintained that the Subject was

[4] The Freeze Act applies only to a final judgment. N.J.S.A 54:3-26. Here, the County Board's judgment for tax year 2015 was pending appeal in this court as of the 2016 assessment date, thus, the Freeze Act could not be the basis for the 2016 assessment.

[5] He also noted that as of March 2015 when reviewing the deed, he could not have predicted that the two sales (the Subject and the other student apartment housing built by the same developer, based on the same building plans, receiving the same exemption from rent control, and sold during December 2014) would be included in the sales study and would skew the City's average ratio.

unique in several ways (new construction; new type of private student housing; a part of small subset of eight buildings providing student housing with security and on-site underground parking; fully exempt from Rent Control for 30 years), thus, not a segment or a neighborhood that could be corrected using this method (especially when most assessments in the neighborhood and most apartments are uniformly assessed). Further, due to the low average ratio, a compliance plan would not have met the requirements of the regulations in this regard, therefore, was not even an option for the City, per the assessor.

As to plaintiff's contention that the City was taking inconsistent positions (i.e., the County Board petition versus the City's appeal against the 2016 average ratio), the assessor explained that he had argued for the exclusion of the Subject sale (and another sale) to avoid an aberrational skewing of the average ratio since it would be unfair to the other taxpayers. He stated that he showed Taxation that the City's average ratio did not decline by 10%, and also explained to Taxation the nature of the Subject, how and why he had set its initial assessment, and how he could not corroborate its 2014 sale price to the assessment.

ANALYSIS

1. Appropriateness of Summary Judgment

Grant of summary judgment is warranted when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). Denial is appropriate "where the party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged.'" Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995). The court must "consider whether the competent evidential materials presented, when viewed in the light most

favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 540.

Initially, the court will not interpret R. 4:46-2 in so rigid a manner and deem the City's untimely submission of its responses to plaintiff's Statement of Material Facts an admission of the same. See Pressler & Verniero, N.J. Court Rules, comment 1.2 to R. 4:46-2(a),(b) (2017) (opponent's failure to comply with the rule cannot "justify a grant of the motion based on the assumption that the movant's statement of material facts is true when the record as a whole clearly shows a material dispute"). This is especially true since the City admitted to many of the relevant facts, and only disputed plaintiff's description (or the implication therefrom) of a few documents.

Next, although the assessor's certification vociferously disputed plaintiff's allegations of improper selective assessment/appeal, plaintiff argued that summary judgment in its favor is still appropriate because the issue presented is legal. In other words, whether the assessment, no matter how accomplished, i.e., whether as the result of an appeal or due to imposition of the same by the assessor, is illegal being based solely on the sale of the Subject property, presents a legal issue for determination. As so framed, the court agrees that the single critical issue is legal, namely, whether a petition to a County Board requesting an increase in assessment due to the sale price of the Subject, and the consequent judgment, is an illegal spot assessment.

In this connection, the court agrees with plaintiff that the assessor's certification does not obfuscate or prevent the court's review by way of summary judgment, of the only legal issue present here. The facts underlying the nature and physical description of the Subject, its pre-sale assessments, its sale, its post-sale assessments, the procedural history leading to the instant motion, and the City's responses to plaintiff's interrogatories (initial and amended) are all uncontested. It is also evident from the City's petition to the County Board that the Subject's sale undoubtedly

had a role to play in the City's appeal challenging the 2015 assessment. Further, the alleged non-provision of discovery by the City does not impede or prevent decision on a summary judgment motion. This is because: (1) the court can take judicial notice of the City's two Resolutions, the accuracy or validity of which are not disputed by plaintiff. See N.J. Evid. R. 201(a) (court can take judicial notice of "determinations of all governmental . . . agencies); see also Charlie Brown of Chatham, Inc. v. Board of Adjustment, 202 N.J. Super. 312, 326 (App. Div. 1985); and, (2) plaintiff had information as to the other eight petitions filed by the City since plaintiff's OPRA request for the same was December 16, 2015, prior to its summary judgment motion.[6]

2. Is the Petition and Consequent County Board Judgment a Spot Assessment?

The issue of an appeal challenging an original assessment versus a spot assessment, has been squarely addressed in Borough of Freehold v. WNY Prop. L.P./Post & Coach, 20 N.J. Tax 588, 596 (Tax 2003) ("whether a municipal appeal of an assessment suffer[s] from the same constitutional infirmities as a spot assessment where the decision to appeal is based in some part on the sale of the property."). There, similar to here, the sale price far exceeded the agreed-to assessment amount, which the assessor noticed when reviewing the sale deed. Id. at 593. The taxpayer challenged the municipality's direct appeal against the assessment as being an indirect but still illegal spot assessment. Id. at 592.

The court initially noted that an assessment is a "unilateral determination" and judgment of the assessor, which due to its presumptive correctness burdens the taxpayer to prove value,

[6] Plaintiff contended that none of the data asserted as having been used or reviewed by the assessor was produced in discovery despite plaintiff's specific request for the same, therefore, it must be disallowed, stricken from the record, or at a minimum the City's opposition must be discredited since it "stands and falls on the" certification. The court notes that the City had offered an inspection of the assessor's file at his office in response to Questions 12 which had sought a copy of the assessor's files and information relied upon "in support of a challenge to the assessment" of the Subject. There was no discovery motion in this regard to this response by plaintiff. Thus, its claim that the assessor's certification referenced data which the City never provided in discovery is not fully accurate.

whereas a municipal appeal is "a claim" of under-assessment which requires the court to "apply its own judgment" to the evidence presented and determine the property's true value, thus, its assessment, which after application of the average ratio, "effectuates the" underpinnings of the Uniformity Clause and the Chapter 123 laws. Id. at 604-605, 611. The court ruled that "although a tax appeal ultimately results in an assessment, the taking of an appeal is not itself an act of assessment." Id. at 605. Consequently, while "assessments are solely the responsibility of the assessor," a municipality can disagree with "any particular assessment only by filing an appeal." Id. at 607. Since "[t]he only remedy provided directly to a municipality in cases of discriminatory assessment is appeal pursuant to N.J.S.A. 54:3-21," and as long as the municipality's decision to appeal is not arbitrary or unreasonable, it is of no moment "that a recent sale caused a municipality to discover that a property may have been underassessed." Id. at 609.

Each party relies upon the above case in support of its position. Plaintiff argues that unlike WNY, supra, here, the decision to appeal was instigated solely by the assessor because: (1) the assessor's name and address was on the County Board petition, (2) the basis for the requested judgment was the Subject's sale price, (3) the County Board judgment's used code 1E (assessor's recommendation), and, (4) the City's Resolutions gave a carte blanche permission to the assessor to file petitions at the County Board. The City contends that the instant case is one of an appeal, and indeed, one where the County Board decided the assessment, therefore, as in WNY, supra, the issue of spot assessment is not implicated.

The court finds that the logic and reasoning of WNY, supra, applies fully here to deny plaintiff's summary judgment motion. The essential facts underlying the basis for the summary judgment are not different, which is that the taxing district sought an assessment change (through a judicial process) because of a hugely disparate sale price of the property vis-à-vis its assessment.

The Subject's assessment was undoubtedly re-examined due to its sale price, however, this exercise and the consequent appeal, is not, in and of itself, fatal. See, e.g., Mountain View Crossing Investors L.L.C. v. Township of Wayne, 20 N.J. Tax 612, 621-22 (Tax 2003), aff'd, 21 N.J. Tax 481 (App. Div. 2004), certif. denied, 182 N.J. 427 (2005). As explained in WNY, supra, the validity of the underlying original assessment is left to the decision and judgment of a judicial or quasi-judicial authority, which may find one or the other party's evidence more persuasive, or can find its own value based on the evidence before it.

The court does not find the City's petition to the County Board to find the true value of the Subject is a disguised illegal spot assessment, even if the basis for the same was the assessor's review of the Subject's 2015 assessment prompted by its sale price in December 2014. The assessor was properly concerned about the Subject's potential under-assessment due to its sale, the Subject being a new type of student housing in the City, thus dissimilar to existing student housing. This court agrees with the ruling in WNY, supra, that "it should [not] make a difference that a recent sale caused a municipality to discover" an under-assessment. 20 N.J. Tax at 609. That the assessor very likely recommended such an appeal also does not make a difference since the City filed the petition with permission of its Council pursuant to a properly adopted Resolution. The court finds such recommendation to be entirely within the assessor's responsibility of reviewing assessments and ensuring their uniformity. N.J.S.A. 54:4-23; Tri-Terminal Corp. v. Borough of Edgewater, 68 N.J. 405 (1975), cert. denied, 425 U.S. 958 (1976).

In this connection, the court rejects plaintiff's suggestion of complicity with, or genuflection to, the assessor by the City's Council or the County Board such that the lines were blurred between these parties, rendering the petition, the hearing, and the ensuing County Board judgment an indirect way of achieving what cannot directly be imposed, i.e., spot assessment.

Municipal action "bears with it a presumption of regularity." Forbes v. Bd. of Trustees of South Orange Village, 312 N.J. Super. 519, 532 (App. Div.), certif. denied, 156 N.J. 411 (1998); see also Charlie Brown, supra, 202 N.J. Super. at 321 (it is presumed that "municipal agencies[] act fairly and with proper motives and for valid reasons," and "must be allowed wide latitude in the exercise of their delegated discretion," due to "their peculiar knowledge of local conditions") (citations omitted). The court does not find anything in the language of the Resolutions as obviating the City's role in filing the petition, especially since the named petitioner was the City, which was represented by Special Tax Counsel. For this same reason, and since the City's Special Tax Counsel was listed on the County Board judgment, it is irrelevant that the County Board petition included the assessor's name and address. Nor is the use of Code 1E on the County Board judgment indicia of indirect spot assessment. While the code may indicate that the County Board was persuaded by the assessor's testimony, and thus the recommended number, (with no evidence from plaintiff) it does not, per se, as a matter of law, establish that the amount included in the "judgment" column is nothing more than the assessment imposed unilaterally (but indirectly) by the assessor. Nor does it, without more, imply that the County Board abdicated its duty to determine the Subject's value based on the evidence presented to it.

Plaintiff's argument that reinstatement of the 2015 original assessment for both tax years is its only equitable remedy, is unpersuasive. Reinstatement of a property's pre-sale assessment is an "extraordinary relief" available only when the assessor acts illegally via a spot assessment. WNY, supra, 20 N.J. Tax at 608. This is not the case here since the increased assessment was a result of the County Board's judgment after a hearing and presentation of testimony. Plaintiff and the City's concerns as to the Subject's true value will be addressed by this court, which is entrusted

with the responsibility of determining the Subject's true value if it has competent sufficient evidence to do so.

In this regard, the court does not find the City's counterclaim as untimely. Plaintiff premises its argument on a technical reading of the pleadings, namely, the City's recitation of the original assessment amount as opposed to the amount decided by the County Board. However, the CIS filed by the City with its Answer and Counterclaim clearly indicated that this was an appeal from a County Board judgment. Plaintiff cannot claim to be surprised because it fully participated in the County Board hearing instituted by the City's challenge to the original assessment, and received the County Board's judgment revising that assessment. It is unreasonable to argue that the City's error (recitation of the original assessment in the counterclaim) meant that the City's counterclaim is actually a direct appeal. Given that New Jersey is a notice pleading jurisdiction, wherein pleadings are liberally construed "in the interest of justice," see R. 4:5-7, and here since plaintiff cannot claim any element of unfair surprise by the mistaken recitation of the original assessment; the court does not find that counterclaim as improper or untimely.

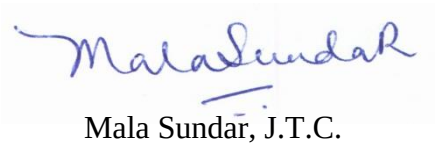
The court is also unpersuaded that the City's inclusion of the Subject's sale in its separate appeal (by another counsel) of the 2016 Table of Ratios established for the City, somehow estops it from using that same sale as an indicia of the Subject's possible under-assessment or is somehow evidence that the assessor indulged in illegal spot assessment. The City's petition to the County Board was in March of 2015, while the appeal against the City's average ratio was much later, and then against the 2016 ratio. The uncontradicted certification of the assessor was that he sought the Subject sale's exclusion in order to maintain the average ratio and avoid unfairness to other taxpayers, rather than a quest for its value.

The undisputed lack of revaluation in the City since 1991 does not establish, per se, that its petition to the County Board alleging under-assessment of the Subject is a spot assessment. The lack of revaluation for a long period can be of concern. See WNY, supra, 20 N.J. Tax at 611 ("There may be some circumstances under which selective appeal by a municipality may be arbitrary and unreasonable, such as, for example, when there is a general lack of uniformity within a taxing district and the municipality has resisted the efforts of its assessor or the county board of taxation to carry out a revaluation"). However, the court does not read this as being a municipality's only course of available action when it is faced with correcting a perceived under-assessment of one or a few properties. If so, it nullifies the very permission to municipalities to file appeals provided in N.J.S.A. 54:3-21 should the appeal use the Subject's sale as evidence of under-assessment. Further, such an argument taken to its end would mean that the taxpayer is "entitled to pay less than their fair share of taxes indefinitely unless the municipality undertakes a revaluation or reassessment of the entire taxing district in order to correct the assessor's mistake [in assessment]," a result clearly "not what was intended by" the cases on spot assessment. Orban v. Township of Alexandria, 21 N.J. Tax 1, 15-16 (Tax 2003). The observation in that case fully addresses plaintiff's similar argument here.

CONCLUSION

For the reasons stated above, and based on the undisputed facts here, the court denies plaintiff's summary judgment motion seeking a reinstatement of the 2015 original assessment for tax years 2015 and 2016.

Very Truly Yours,



Mala Sundar, J.T.C.