

Reverse Property Tax Appeals

A little known but long established principal allows municipalities to contest property tax assessments that may be erroneous

By Robert Blau, Esq., Blau & Blau



Everyone knows that a property owner has the right to file a property tax appeal to the county board of taxation or the New Jersey Tax Court. Very few know that the same statute that gives the property owner the right to contest an assessor's opinion of value gives the same right to the municipality. The Appellate Division has noted that the statute, N.J.S.A. 54:3-21, "clearly and unequivocally accords both the taxpayer and the taxing district an independent right to appeal from a property tax assessment¹."

How can this be? How can a municipality contest its own assessment? The answer lies in a little known but long established principal of New Jersey law. The assessor is a creature of the Legislature, independent of control by the municipal governing body². Both the Courts and the Legislature have recognized the need of the assessor to be free from municipal interference in making an assessment and in carrying out the responsibilities of the assessor. Municipalities have a limited role with respect to assessors so that assessors can carry out their responsibilities free from political pressure³. But because the Legislature has mandated that an assessor cannot be pressured to increase an assessment, it has also provided that the assessor's independent judgment can be appealed.

Everyone should recognize that even the best assessors occasionally make a mistake. Reasonable minds may differ as to the value of a property. Value after all is never a fact but merely a matter of opinion⁴. Even after a revaluation many assessments can be wide of the mark.

Municipal tax appeals are governed by the same standard as taxpayer appeals. N.J.S.A. 54:51A-6, commonly known as "Chapter 123," establishes a presumptive common level of ratio of assessed value to true value in non-revaluation years. If the "true value" of the property, as found by the county board of taxation or New Jersey Tax Court, is more than 15 percent above the common level then the county board or Tax Court will increase the assessment by multiplying the common level

ratio by the true value. If the “true value” of the property, as found by the county board of taxation or New Jersey Tax Court, is more than 15 percent below the common level then the county board or Tax Court will decrease the assessment by multiplying the common level ratio by the true value.

As in a conventional appeal, the original assessment is presumed to be correct. The strength of the presumption is exemplified by the nature of the evidence that is required to overcome it. That evidence must be “definite, positive and certain in quality and quantity to overcome the presumption⁵.”

Political considerations can be avoided by isolating the governing body from the team that recommends appeals.

The New Jersey Supreme Court has noted that the government’s primary obligation is to comport itself with compe- tence and integrity and that, therefore, a municipality should not file a tax appeal absent independent grounds for believing in good faith that its assessment is erroneous⁶. For that reason, and because an attorney’s signature on a complaint certifies that to the best of his or her knowledge, information and belief that the factual allegations have evidentiary support, a municipality should not file appeals in a scattershot approach hoping that something sticks. Besides, no plaintiff wants to pay for litigation and not win.

It is imperative that the municipal team consisting of knowledgeable attorneys and appraisers review all available data available to them before recommending properties to appeal. Sources of data include sales, assessor’s requests for income and expense statements pursuant

to N.J.S.A. 54:4-34, (i.e. Chapter 91 requests), and property record cards. Interestingly, although New Jersey Court’s consider it to be illegal “spot assessing” for an assessor to increase an assessment merely because of the sale of a subject property⁷, a municipality may appeal an assessment even if the sale of the property played a role in the decision to appeal⁸. Although the assessor may be consulted for his expertise or data, the assessor should not determine which assessments should be appealed.

Larger municipalities can take advantage of their larger data set, but only if the review team has the sophistication and computer skills for effective cross-referencing. When one class of property, whether that class consists of industrial, vacant land, retail, multi-family or even a particular neighborhood, has been found to have a significant number of under-assessed properties, other properties in the same class should be examined in greater detail.

Political considerations can be avoided by isolating the governing body from the team that recommends appeals. While appeals are filed in the name of the governing body, the governing body need not, and may not want to, authorize each individual appeal. Rather, the governing body may prefer to authorize its municipal attorney to investigate properties that are significantly under assessed and to appeal to the county

board of taxation or Tax Court of New Jersey as warranted. The municipal attorney should, in most cases, retain special counsel for that task.

To insure that the appeals have a positive fiscal impact, the municipality may want special tax counsel to take the case on a contingent fee basis⁹. For the same reason, the municipality may ask its attorneys to advance court costs and expenses of litigation (appraisal fees), the repayment of which may be contingent upon the outcome of the matter¹⁰. Retention of counsel with appraisal expertise may, in many cases, avoid the expense of appraisal fees altogether. ■

- 1 F.M.C. Stores v. Borough of Morris Plains, 195 N.J. Super. 373, 380 (App. Div.), aff’d, 100 N.J. 418, 425 (1985). “
- 2 Arace v. Irvington, 75 N.J. Super. 258 (L. Div. 1962); Mitchell v. Somers Point, 281 N.J. Super 492 (App. Div. 1994).
- 3 Association of Municipal Assessors v. Mullica Twp. 225 N.J. Super 475, 481-482 (L. Div. 1988).
- 4 Garden Realty Corp. v. Hadley, 110 N.J. Eq. 474 (E&A, 1932; Litton Bus. Systems, Inc. v. Borough of Morris Plains, 8 N.J. Tax 520, 531 (Tax 1986)
- 5 Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985), citing Aetna Life Ins. Co. v. Newark, 10 N.J. 99, 105 (1952).
- 6 FMC Stores v. Borough of Morris Plains, 100 N.J. 418, 426-427 (1985)
- 7 Township of West Milford v. Van Decker, 120 N.J. 354 (1990).
- 8 Freehold Borough v. WNY Properties, 20 N.J. Tax 588 (Tax 2003).
- 9 N.J. Rule of Professional Conduct 1:21-7.
- 10 N.J. Rule of Professional Conduct 1-8(e)(1)

Serving New Jersey’s Improvement Districts

Protect your world
Auto • Home • Life • Retirement

Allstate
You're in good hands.
Auto • Home • Life • Retirement

Call us today for more information.
Compare rates from Allstate and other insurance companies. In NJ, Allstate can also protect your home or apartment, your car, motorcycle, watercraft, boat, and your retirement and your life. And the price of your world is just the beginning. We make you the center.

DAVID DELUCO AGENCY LLC
973-429-0335

NJMDA
New Jersey Managed Districts Association

A professional trade association representing special and/or business improvement districts, district organizations and district managers.

Online At:
www.NJManagedDistricts.com
www.facebook.com/njmda

Service and Savings for New Jersey's Small Businesses and Improvement Districts.

AFS
AHART, FRINZI & SMITH
INSURANCE

www.afsinsurance.com