

May 9, 2022

## Tax Court Holds That CAFRA Permit Is Not a Prima Facie Bar to Application of the Freeze Act

New Jersey's so-called Freeze Act (N.J.S.A. 54:51A-8) prohibits increases in appealed and reduced real property tax assessments for two years. Application of the Freeze Act can potentially be voided, however, if a municipality makes a prima facie showing that there is an internal or external change in value from the base year assessment and that it occurred after the assessing date of the base year and if the change substantially and meaningfully increased the value of the property. Once a prima facie showing is made, the matter proceeds to a plenary hearing on the applicability of the Freeze Act.

In a case of first impression, the Tax Court of New Jersey in *Giant Realty, LLC v. Lavallette Borough*, 2022 WL 1288198 (April 28, 2022), was asked to decide whether the grant of a Coastal Area Facility Review Act (CAFRA) permit after the base year assessing date (here October 1, 2013) resulted in a prima facie nullification of application of the Freeze Act for the 2015 and 2016 tax years. The taxpayer filed tax appeals on six vacant lots in the borough of Lavallette for the 2014 tax year. After a trial on the merits, the tax court issued a judgment on March 20, 2020, reducing the 2014 assessments, which varied from \$1 million to \$1.25 million for each of the six parcels, to \$810,833. The taxpayer subsequently filed a motion for relief under the Freeze Act to apply the 2014 judgment to the 2015 and 2016 tax years, reducing the assessments for those years for each of the parcels to \$810,833 as well. The borough opposed the taxpayer's motion, asserting that an external change in value occurred due to the issuance on September 22, 2015, by the New Jersey Department of Environmental Protection of a CAFRA permit allowing the development of the subject properties with four single-family dwellings. The borough argued that the issuance of the CAFRA permit resulted in the property being developable pursuant to local zoning and building laws and therefore resulted in a prima facie increase in the value of the properties.

The court found that the borough did not meet its burden of demonstrating that the issuance of a CAFRA permit would have resulted in a willing buyer to pay substantially and meaningfully more for the property on the assessing date for the Freeze Act years (October 1, 2014, and October 1, 2015) than it would have paid on the assessing date for the base year (October 1, 2013). In that regard, the court found that the borough merely argued that the change in the status of the lots, due to the CAFRA permit, from unbuildable dunes to buildable lots substantially and meaningfully increased their value. The court noted that while the CAFRA permit was applicable to all six lots under consideration, it permitted the construction of only four homes, thereby requiring the six lots to be reconfigured into four building lots. The defendant provided no explanation of how the value of the four building lots related to the value of the six building lots subject to the 2014 tax court judgments. The court also noted that to develop a property subject to CAFRA, approval from local zoning authorities must also be obtained. There was nothing in the court's decision to indicate that local approval had been obtained. The tax court found that the borough failed to make the required prima facie showing of an increase in value and therefore upheld application of the Freeze Act to the 2015 and 2016 tax years, based on the reduced 2014 tax assessment.

The upshot of the Tax Court of New Jersey's decision is that there may be instances where the granting of a CAFRA permit is sufficient to conclude that there has been a change in value, but whether such a change is substantial and meaningful can be measured only by a showing of the value of the property both before and after the change. The mere granting of a CAFRA permit does not, in and of itself, constitute a prima facie showing by a municipality to require a plenary hearing regarding applicability of the Freeze Act.

## Authors



**Christopher John Stracco**  
**Of Counsel**

Parsippany, NJ | (973) 966-8220  
cstracco@daypitney.com



**Craig M. Gianetti**  
**Partner**

Parsippany, NJ | (973) 966-8053  
cgianetti@daypitney.com



**Erin Hodgson**  
**Senior Associate**

Parsippany, NJ | (973) 966-8157  
ehodgson@daypitney.com



**Jennifer L. Solberg**  
**Partner**

Parsippany, NJ | (973) 966-8056  
jsolberg@daypitney.com



**Katharine A. Coffey**  
**Partner**

Parsippany, NJ | (973) 966-8323  
kcoffey@daypitney.com



**Nicole M. Magdziak**  
**Partner**

Parsippany, NJ | (973) 966-8027  
nmagdziak@daypitney.com



**Peter J. Wolfson**  
**Partner**

Parsippany, NJ | (973) 966-8298  
[pwolfson@daypitney.com](mailto:pwolfson@daypitney.com)



**Thomas J. Malman**  
**Partner**

Parsippany, NJ | (973) 966-8179  
[tmalman@daypitney.com](mailto:tmalman@daypitney.com)