DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO Arapahoe County Justice Center 7325 S. Potomac Street Centennial, CO 80112 Phone (303) 649-6355	DATE FILED: June 10, 2020 1:24 PM CASE NUMBER: 2018CV31387
Plaintiffs: AURORA URBAN RENEWAL AUTHORITY **v.** **Defendants: PK KAISER, in his role as Arapahoe County Assessor**	▲ COURT USE ONLY ▲ Case Number: 2018CV31387
ORDER RE: CROSS MOTIONS FOR SUMMARY JUDGMENT C.R.C.P. 56(c)	

THE COURT, having considered Plaintiff and Defendant's Motion[1] for Summary Judgment pursuant C.R.C.P. 56, the Responses and Replies thereto and being fully advised in the premises, hereby finds and orders as follows:

FACTUAL SUMMARY

A. Procedural History and Background

The following facts appear undisputed. This action involves Colorado's Urban Renewal Law (the "URL") and the allocation of property tax revenues within urban renewal areas that are subject to tax increment financing ("TIF"). TIF is rooted in Colorado's Urban Renewal Law, C.R.S. § 31-25-101 *et seq.* ("URL"). The case concerns the methodology by which the Defendant P.K. Kaiser, in his role as the Arapahoe County Assessor, ("Defendant" "Assessor"), calculates what is known as the "Base Valuation[2]" under the URL. As the Plaintiff Aurora Urban Renewal Authority ("AURA") notes in the Complaint, TIF is a means to bridge the gap

[1] Defendant also filed Motion for Judgment on the Pleadings which was considered in another order.
[2] Base Valuation is the valuation of all properties within an urban renewal area at the beginning of the increment financing or the TIF plan.

between existing market conditions in underdeveloped or blighted areas and the cost of improvements. *See* Complaint. TIF allows urban renewal authorities such as AURA to issue revenue bonds or incur other obligations for the costs of projects designed to redevelop "blighted" urban areas. Urban renewal authorities with TIF plans are allocated the incremental property tax revenues ("Incremental Revenues") received from the property value increases over the Base Valuation. These Incremental Revenues are deemed the result of urban redevelopment efforts. *See Northglenn Urban Renewal Auth. v. Reyes*, 300 P.3d 984, 986 (Colo. App. 2013) ("After all levies are assessed and collected on the subsequent valuation, any incremental increase in the base amount is deemed the result of the urban redevelopment efforts by the municipality and is distributed to the urban renewal authority.")

In order to spur redevelopment in these blighted or under-utilized areas, municipalities such as Aurora designate geographic areas as "urban renewal areas" and initiate for these areas "urban renewal projects." A portion of costs of the urban renewal projects is provided by TIF. TIF involves allocating all or a portion of the expected future increases in property tax revenues and/or sales tax revenues in an urban renewal area to the urban renewal project. By law, these increased property or sales tax revenues would not be generated "but for" the urban renewal project. *Denver Urban Renewal Authority v. Byrne,* 618 P.2d 1384, 1387 (Colo. 1980); *See* Complaint.

AURA brought this suit regarding the calculation of the increased property tax revenues generated in urban renewal areas. *See* Complaint. AURA states in the Complaint that "[t]o calculate such revenues, TIF requires county assessors to establish an initial baseline valuation of properties within each urban renewal area." The assessors do this by identifying "the valuation for assessment of taxable property in the urban renewal area last certified prior to the effective

date of approval of the urban renewal plan . . ." C.R.S. § 31-25-107(9)(a)(I). This baseline valuation is known as "Base Valuation." Base Valuation is supposed to remain ***frozen*** (except in the limited circumstances discussed below). Property tax revenues produced by the annual levy upon the Base Valuation ("Base Valuation Revenues") continue to be "paid into" the respective taxing jurisdictions, as if no development occurred. *Id.* Any property tax revenues in excess of the Base Valuation Revenues are deemed incremental revenues ("Incremental Revenues"). *See* C.R.S. § 31-25-107(9)(a)(II). Incremental revenues are only generated to the extent that property values in the urban renewal area increase. Incremental Revenues are "allocated" to the urban renewal authorities for use in redevelopment activities, according to the terms of urban renewal plans and for a period of up to 25 years. *Id.*

While the Incremental Revenues are allocated to the urban renewal authority, the overlapping taxing jurisdictions nevertheless benefit from a successful urban renewal development. The remediation of blight often increases the value of property adjacent to an urban renewal area, thereby increasing property taxes received by the overlapping taxing jurisdictions. Further, at the conclusion of the 25 year period, any increases in property valuation within the urban renewal area are included in the tax base of the overlapping taxing jurisdictions. Thus, by allocating the increases in property tax revenues—and *only* the increases in property tax revenues—TIF enables the remediation of blight without depriving the overlapping taxing jurisdictions of the property tax revenues they would otherwise have received. In fact, TIF actually enhances these jurisdictions' tax revenues.

Under Section 31-25-17(9)(a)(I), the assessor must calculate and report the Base Valuation so that the overlapping taxing jurisdictions know the valuation to which they will apply their annual mill levies, and so that the county treasurer can determine the Incremental

Revenues to allocate to the urban renewal authorities. The URL expressly provides the "manners and methods" by which county assessors calculate and allocate TIF base and increment valuation. These valuations are dictated by the PTA and set forth in Vol. II, Chapter 12 of the Assessor's Reference Library ("ARL").[3] § 31-25-107(9)(h), C.R.S. The PTA is required by C.R.S. § 39-2-109 to prepare and publish the ARL, and both parties agree the ARL is binding upon county assessors. Indeed, the Colorado Supreme Court has ruled that county assessors are required to follow the directives in the ARL in order to provide uniformity of taxation among all Colorado counties. *See Huddleston v. Grand Cty. Bd. of Equalization*, 913 P.2d 15, 17 (Colo. 1996) ("We conclude that the State Property Tax Administrator's Assessors' Reference Library Manuals are binding on the sixty-three county assessors.").

B. The present controversy

AURA filed this action as a challenge to the ARL's procedures regarding TIF base and increment allocation, claiming those procedures were in conflict with the URL. *See, e.g.*, Amended Complaint at p. 3. The Amended Case Management Order entered by the Court on August 21, 2019 (the "CMO"), provides that the challenged methodology is expressly set forth in the ARL, which the Assessor is obligated to follow and lacks the authority to change. CMO at ¶ 7; *see also* Amended Complaint at p. 3 ("The role of a county assessor in the calculation and allocation of Incremental Revenues is supposed to be limited. The assessors are guided in this exercise by Vol. II, Chapter 12 of the [ARL], which is published by the PTA and binding on county assessors.").

[3] The ARL consists of a series of three manuals and a statutory index addressing numerous topics pertinent to property tax assessment in Colorado. The current ARL and older archived versions are publicly available at https://www.colorado.gov/pacific/dola/assessors-reference-library-manuals.

In the instant case, the Parties both filed a motion to dismiss. In its Combined Order, on the Motions to Dismiss the Court ruled that (1) the PTA is a superior state agency to AURA, Order at p. 10; (2) "AURA lacks constructional [sic] or statutory authority that would allow it to sue a superior state agency," *Id.*; and (3) "AURA also lacks prudential standing against the [PTA]," *Id.* "Prudential standing is a judge-made rule developed to keep courts from interfering in matters that are more properly resolved by another branch of state government." Order at p. 8 (citing *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 438 (Colo. 2000)). Moreover, "[p]rudential standing prevents local governments from challenging state statutes directing the performance of their duties and prevents subordinate state agencies from challenging the actions of superior state agencies." *Id.* at pp. 8-9 (citing *City of Greenwood Vill.*, 3 P.3d at 438).

The Court also ruled that "Under section 39-2-109(1)(e), C.R.S., the [PTA] prepares the manuals, including the [TIF] apportionment formula," Order at p. 3; (2) "this case is one where the Assessor is administering property tax law," *id.* at p. 14; and (3) it "declines to interfere with the statutorily mandated duties of the Assessor and require him to follow a new allocation formula that the SBOE has the power to implement," *id.* at p. 15 (citing *People v. Zapotocky*, 869 P.2d 1234, 1244 (Colo. 1994) ("Courts cannot, under the pretense of deciding a case, assume power vested in either the legislative or executive branch of the government.") and *Chonoski v. State, Dep't of Revenue*, 699 P.2d 416, 417 (Colo. App. 1985) ("Trial courts lack jurisdiction to enjoin administrative agencies from performing their statutory functions."). These findings are now the law of the case.

Two claims remain in this case: The First and Third Claims against the Assessor. The Defendant Assessor seeks Summary Judgment on these claims asserting that : (1) The Plaintiff

failed to Timely appeal the State Board of Equalization's ("SBOE") decision to adopt the revised version of Chapter 12 of the Volume II of the Assessor's Reference Library ("ARL"); and (2) the Assessor's actions were not only required by the ARL but were also required by, and compliant with, Colorado's Urban Renewal Law ("URL").

The Plaintiff also seeks Summary Judgment. Plaintiff AURA argues that Summary Judgment is appropriate because the "[a]ssesor employs a convoluted methodology . . . that ignores that incremental increases are 'deemed' the result of redevelopment effort [but instead] continually increases Base Valuation over the life of a TIF plan based on annual reappraisal of the underlying properties." *See* Plaintiff's Motion for Summary Judgment at p. 2. It also alleges that the Assessor's "interpretation" of the ARL manuals "must be rejected because it is inconsistent with the language and goals of the URL" and leads to "absurd" results. *Id.* Plaintiff seeks Summary Judgment because (1) the Court should declare that the methodology employed by the Assessor is inconsistent to the URL to the extent that it increases Base Valuation based on reappraisals; and (2) that the Court should declare the methodology employed by the Assessor to be inconsistent with the URL to the extent it presumes valuation increases to be the product of general market conditions. *See* PMSJ[4].

C. Statement of Undisputed Facts

These undisputed facts are taken from the pleadings, and the statements of undisputed facts contained in the Cross Motions for Summary Judgment.

[4] The Court notes that there were extensions sought by the parties for filing dispositive motions which were granted by the Court for good cause shown. As a result, the cross Motions for Summary Judgment were ripe only on May 18, 2020, less than one month before trial. These motions were lengthy, because of the subject matter very detailed, somewhat prolix in nature, and necessitated lengthy review of the voluminous exhibits. The Court thus issues this order shortly before trial.

1. An urban renewal plan with a property tax TIF component will cause property tax revenues to be divided between what are known as Base Revenues and Incremental Revenues. Plaintiff's Motion for Summary Judgment ("PMSJ") attached Clayton Decl. p. 5.1

2. The Colorado Urban Renewal Law ("URL") mandates that "[in the event that there is a general reassessment of taxable property valuations," the TIF base and increment valuations "shall be proportionally adjusted in accordance with such reassessment." § 31-25-107(9), C.R.S. (the "general reassessment provision.") Defendant's Motion for Summary Judgment ("DMSJ") at p. 2

3. The URL describes Base Revenues as "[t]hat portion of taxes which are produced by the levy at the rate fixed each year by or for each public body upon the valuation for assessment of taxable property in the urban renewal area last certified prior to the effective date of the approval of the urban renewal plan..." C.R.S. § 31-25-107(9)(a)(I).

4. Base Revenues "shall be paid into the funds of each public body as are all other taxes collected by or for said public body." C.R.S. § 31-25-107(9)(a)(I).

5. Incremental Revenues are "[t]hat portion of said property taxes...in excess of the amount of property taxes...paid into each such public body..." C.R.S. § 31-25-107(9)(a)(II).

6. Incremental Revenues "must be allocated to and, when collected, paid into a special fund of the [urban renewal] authority...." C.R.S. § 31-25-107(9)(a)(II).

7. The URL descries Base Revenues as "[t]hat portion of taxes which are produced by the levy at the rate fixed each year or for each public body upon the valuation for assessment of taxable property in the urban renewal area last certified prior to the effective date of the approval of the urban renewal plan." § 31-25-107(9)(a)(I). Plaintiff's statement of undisputed facts.

8. The URL expressly provides that the "manners and methods" by which the county assessors calculate and allocate TIF base and increment valuations shall be prepared by the Colorado Property Tax Administrator ("the Administrator") and as set forth in the ARL.[5] DMSJ at p.2.

9. In calculating property values within an urban renewal area, the Assessor is guided by Vol. 2, Chapter 12 of the ARL Manual. PMSJ attached Ex. A, Dolph p.12:15-13:1.

10. The Administrator's duty to draft the ARL is "subject to the supervision and control of the state board of equalization." Colo. Const. art. X, § 15(2); § 39-2-109(1)(e), C.R.S. (the Administrator's duties include [p]repar[ing] and publish[ing] from time to time manuals, appraisal procedures, and instructions after consultation with the advisory committee to the property tax administrator and the approval of the state board of equalization") PMSJ at p.3.

11. County Assessors are required to file all of the directives of the ARL in order to provide uniformity of taxation among all the counties. *See Huddleston v. Grand Cnty. Bd. Of Equalization*, 913 P.2d 15, 17 (Colo. 1996).

12. The SBOE has the authority to either accept or reject the proposed revisions to an ARL as a whole. If it accepts proposed changes, the sections under review then move to the state legislature for final review. § 39-2-109(1)(e), C.R.S.

13. If the SBOE rejects changes as a whole the PTA then has to start the stakeholder process and revision process anew. DMSJ at p.4, attached *Settle affidavit* at ¶16; Exhibit 9 at 92:12-19.

14. Pursuant to statute a party must appeal a decision of the SBOE within 35 days of the approval of the ARL sections under review as provided in section 106(4) of the APA. *See* § 39-9-108, C.R.S.; § 24-4-106(4), C.R.S.

[5] The ARL consists of a series of three manuals and a statutory index addressing numerous topics pertinent to property tax assessment in Colorado. The current ARL and older archived versions are publicly available at https://www.colorado.gov/pacific/dola/assessors-reference-library-manuals.

15. The stakeholder meetings concerning the provisions at issue in this matter occurred on August 20, 2015, January 28, 2016, and July 28, 2016. *See* DMSJ at 7, attached Settle affidavit at ¶¶ 6-6.

16. Although AURA and other similarly situated stakeholders participated in the October 5, 2016 SBOE hearing, AURA did not pursue judicial review as provided under the APA.

17. In making calculations, the Assessor first sets a Base Valuation of all properties within the urban renewal area in accordance with C.R.S. § 31-25-107(9)(a)(I). PMSJ attached Ex. A, Dolph p. 20:18-24.

18. The Assessor then engages every year in a multi-step exercise to redetermine Base Valuation. The Assessor first attempts to determine what portion of assessed valuation changes to properties within an urban renewal area were caused by certain enumerated activities within the urban renewal area. PMSJ attached Ex. A, Dolph p. 32:6-17; Ex. 3 p. 12.18 Step 4.

19. The Assessor terms changes caused by activities within the urban renewal area as "non-reassessment changes" ("Non-Reassessment Changes"). PMSJ attached Ex. A, Dolph p. 32:6-17; Ex. 3 p. 12.15, p. 12.18 Step 4.

20. The Assessor allocates the assessed valuation changes "caused by" the Non Reassessment Changes to a category of valuation it terms "Incremental Valuation." *Id.*

21. The Assessor terms the remainder of the changes in assessed valuation to be caused by "reassessment changes" ("Reassessment Changes"). PMSJ attached Ex. 3 p. 12.17.

22. Reassessment Changes are determined through the reappraisal process and are supposed to reflect general market conditions. PMSJ attached Ex. A, Dolph 102:15-21; Ex. 3 pp. 12.3, 12.17.

23. The Assessor "proportionally adjusts" Base Valuation and Incremental Valuation by allocating the assessed valuation changes the Assessor deems attributable to Reassessment

Changes according to the then-existing ratio between Base Valuation and Incremental Valuation. PMSJ attached Ex. A, Dolph 45:7-17; Ex. 3 p. 12.18 Step 6. 5 4829-7017-9741.1

24. At the conclusion of each year, the Assessor calculates a new Base Valuation (which represents the originally set Base Valuation plus the accumulated annual allocated assessed valuation changes due to Reassessment Changes) and an Incremental Valuation (which represents the accumulated annual assessed valuation changes due to Non-Reassessment Changes plus the accumulated annual allocated assessed valuation changes due to Reassessment Changes). PMSJ attached Clayton Decl. pp. 7-8; Ex. 3 p. 12.18 Step 8.

25. The Base Revenues from the Base Valuation are allocated to the various taxing jurisdictions (county, school district, special districts), and the Incremental Revenues from the Incremental Valuation are allocated to AURA. C.R.S. §§ 31-25-107(9)(a)(I) and (II).

STANDARD OF REVIEW

It is undisputed that Summary judgment is a drastic remedy and is never warranted except on a clear showing that there exists no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1339–40 (Colo. 1988) (citing *E.g., Pueblo W. Metro. Dist. v. Southeastern Colo. Water Conservancy Dist.,* 689 P.2d 594, 600 (Colo. 1984); *Ginter v. Palmer & Co.,* 196 Colo. 203, 205, 585 P.2d 583, 584 (1978); *Abrahamsen v. Mountain States Tel. & Tel. Co.,* 177 Colo. 422, 426, 494 P.2d 1287, 1288 (1972). The moving party has the burden of establishing the lack of a triable factual issue, and all doubts as to the existence of such an issue must be resolved against the moving party. *Travelers Ins. Co. v. Savio,* 706 P.2d 1258, 1276 (Colo. 1985); *Ginter,* 585 P.2d at 584; *Primock v. Hamilton,* 168 Colo. 524, 528, 452 P.2d 375, 378 (1969). A party against whom summary judgment is sought is entitled to the benefit of all favorable inferences that may

be drawn from the facts. *Kaiser Found. Health Plan v. Sharp,* 741 P.2d 714, 718 (Colo.1987); *Mount Emmons Mining Co. v. Town of Crested Butte,* 690 P.2d 231, 239 (Colo.1984); *See generally* 6 J. Moore & J. Wicker, *Moore's Federal Practice,* pt. 2, ¶ 56.27[1] (2d ed. 1987 & 1987–88 Supp.); 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2716 (2d ed. 1983) ("reviewing court only may determine whether a genuine issue exists and whether the law was applied correctly; it cannot decide disputed issues of material fact."); Schwarzer, *Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact,* 99 F.R.D. 465, 489–93 (1984).

ANALYSIS

It is undisputed that the Property Tax Administrator is statutorily required to draft an ARL, which county assessors must follow. Plaintiff AURA has admitted that it is not asking the Court to "invalidate" or strike down the ARL or order the PTA to adopt a new methodology…[but instead] merely seeks a declaration that the Assessor's conduct "violated the URL." Response at p. 7. However, after reading the Plaintiff's Motion for Summary Judgment and the Defendant's Motion for Summary Judgment it is clear that Plaintiff AURA is in fact challenging the allocation methodology for TIF revenues stated in the ARL and that the Defendant Assessor believes that in following the ARL he has immunity from these claims.

First, AURA's Motion for Summary Judgment, Replies and Responses to the Defendant's Motion for Summary Judgment and other pleadings in the file demonstrate that AURA is challenging the allocation methodology, and the briefs of the Assessor make it clear that he believes he is powerless to do anything other than follow the ARL. *See* Response at p. 5, n. 2 ("…the First Claim for Relief was ***crystal clear*** in its acknowledgement that while the claim was asserted against the Assessor (*See, e.g.*, Am. Compl. ¶¶ 220-224), the claim implicated the

PTA's interpretation of the URL in the ARL) (emphasis added); *see also* Amended Complaint at p. 3 ("The role of a county assessor in the calculation and allocation of Incremental Revenues is supposed to be limited....The assessors are guided in this exercise by Vol. II, Chapter 12 of the [ARL], which is published by the PTA and binding on county assessors."); Amended Complaint at ¶¶ 234-240 (alleging concerns with the ARL provisions and the "PTA's interpretation" of "general reassessment" in the URL).

Second, because the URL does not contain an allocation methodology, it expressly dictates that the PTA "shall" specify how Assessors perform the allocation, instructing that (1) the PTA "shall" develop the "manners and methods" for implementing TIF allocation, and (2) assessors will "implement" the PTA's procedures. C.R.S. § 31-25-107(9)(h) ("The manner and methods by which the requirements of this subsection (9) are to be implemented by county assessors shall be contained in such manuals, appraisal procedures, and instructions, as applicable, that the property tax administrator is authorized to prepare and publish pursuant to section 39-2-109(1)(e), C.R.S."). These manuals (the ARL) are then approved by the State Board of Equalization (SBOE) through an administrative process. C.R.S. § 39-2-109(e). Thus, any challenge to the allocation methodology is a direct challenge to the ARL, as adopted by the PTA and approved by the SBOE.

As stated previously, this Court has already confirmed that the ARL governs the TIF allocation in accordance with the plain language of the URL. *See* June 18, 2019 Combined Order: (1) "The Administrator is a constitutional officer appointed by the State Board of Equalization ('SBOE') that develops standards to implement the URL, including how the base and incremental revenues will be apportioned," Combined Order at p. 3; (2) "In calculating the Base Valuation and Increment Revenues, the county assessor is required to follow the Assessor's

Reference Library…[which] contains instructions concerning the calculation of Base Valuation, including a worksheet and instructions that direct the assessors to follow the Subjective Causation Methodology," *id.* at p. 2; and (3) "AURA is a beneficiary of the allocated TIF revenues that are calculated by the Assessor in accordance with a methodology determined by the Administrator," *id* at pp. 9-10.

Plaintiff AURA also admits that the ARL tells the Assessor exactly what to do, that the Assessor followed the ARL's procedures, and that the Assessor could do nothing else. *See* Amended Case Management Order entered August 21, 2019 at ¶ 7 (in which AURA concedes: "the challenged methodology is set forth the in [sic] Assessors Reference Library, which is published by the State Property Tax Administrator and which the Assessor is obligated to follow and lacks authority to change"); *see also* Amended Complaint at p. 3 ("The role of a county assessor in the calculation and allocation of Incremental Revenues is supposed to be limited….The assessors are guided in this exercise by Vol. II, Chapter 12 of the [ARL], which is published by the PTA and binding on county assessors."). In fact, there is not a single allegation from AURA that the Assessor failed to follow the ARL, misapplied the ARL, or miscalculated the TIF in violation of the ARL's required procedure. Accordingly, and despite AURA's argument that any distinction between "facial" and "as-applied" challenges to TIF revenue calculations is merely "artificial" (see Response at p. 3), this lawsuit is indeed nothing more than a direct – or "facial" – challenge to the ARL as applied by the Assessor in this case.

In short, while AURA attempts to characterize its claims as merely targeting the Assessor's compliance with the URL, the Court agrees that what AURA is essentially seeking is a declaration finding that the Assessor misapplied the ARL's TIF allocation procedures in this case and thus has committed an error inconsistent with the umbrella URL. But this Court has

already ruled that it (1) lacks the ability to issue any relief as against the PTA, who is statutorily required to draft the ARL (i.e., AURA lacks standing), and (2) cannot and will not "interfere with the statutorily mandated duties of the Assessor and require him to follow a new allocation formula that the SBOE has the power to implement." Combined Order at pp. 10 & 15.

Review of the Defendant's Motion for Summary Judgment necessarily would preclude further review of the Plaintiff's Motion for Summary Judgment. Therefore, the Court reviews the Defendant's Motion for Summary Judgment with these principles in mind.

I. Whether the claim is barred by a failure to pursue judicial review of the SBOE decision.

Defendant first asserts that the claim is barred by Plaintiff's failure to pursue judicial review of the SBOE decision. It asserts that the Plaintiff participated as a stakeholder in the administrative proceedings which led to the SBOE decision adopting the TIP allocation procedures. See PMSJ at p. 7-9. It also appears undisputed that the Plaintiff also, through counsel, advocated its opposition to the TIP procedures and the general reassessment procedures. *See* Exhibit 7, 8 to PMSJ, and Exhibit 9. As a result, the Defendant argues that the Plaintiff knew that it needed to seek judicial review under the APA if they did not like the revisions, and it appears undisputed that they failed to do so in a timely manner. *See* § 39-9-108, C.R.S; and § 24-4-106(4), C.R.S. The present action was commenced 16 months after the adoption of the Chapter 12 revisions and as a result, the Defendant argues that it is time barred. Indeed the Court agrees that it would be time barred if it was brought against the SBOE. However, the SBOE is not the Defendant in this matter and the Defendant has provided no authority either statutory or by case law that would indicate that the action against the Assessor is time-barred under this provision. It thus rejects the Motion for Summary Judgment on this ground.

II. Whether the Assessors actions were required and compliant by the URL and thus the claim fails on the merits.

The Defendant next asserts that the Defendant Assessor is entitled to Summary Judgment on the merits because "AURA's remaining claims are based on the allegation that the Assessor violates the URL . . . by employing a methodology based on a misinterpretation of the term 'general reassessment' in . . . § 31-25-107(9)(e) [C.R.S.]". DMSJ at p. 11, citing Amended Complaint at ¶ 220. Plaintiff contends "[t]he proper interpretation of 'general reassessment' in Section 31-25-107(9)(e) is that the county assessors are required to make changes to Base Valuation only when there are changes in the statewide general assessment rate of real property." See DMSJ at p. 11. Defendant then asserts that "AURA's claims fail for two reasons. First, AURA's focus on the "general assessment rate" to define "general reassessment" is not supported by the plain language of the statute. Second, even if the Court deems the language ambiguous, AURA's interpretation conflicts with the legislative history." The Court will consider each of these arguments separately.

A. Construction of the term "General Assessment."

In construing a statute, the Court's "primary duty...is to give effect to the intent of the General Assembly, looking first to the statute's plain language." *Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004). "If a statute is clear and unambiguous on its face, then [the Court] need not look beyond the plain language and...must apply the statute as written." *Id.* (internal quotes and citation omitted). Moreover, "[w]hen the statutory language is plain, it should not be subjected to a strained or forced interpretation." *Kern v. Gebhardt*, 746 P.2d 1340, 1344 (Colo. 1987). "Forced, subtle, strained or unusual interpretation should never be resorted to where the language is plain, its meaning is clear, and no absurdity is involved." *Harding v. Indus. Comm'n,* 515 P.2d 95, 98 (Colo. 1973). Statutory interpretation presents a question of law that we review de novo.

McCoy v. People, 2019 CO 44, ¶ 37, 442 P.3d 379, 389 (Colo. 2019). Thus, in interpreting statutes, the Court's primary goal is to discern the legislature's intent. *Id.* A Court does this by first looking to the plain language of the statute, reading the statute as a whole and giving words and phrases their common meanings. *Id.* If the language is clear, we apply it as written. *Id.* If, however, the language is ambiguous, meaning it is silent or susceptible to more than one reasonable interpretation, we may use extrinsic aids of construction, "such as the consequences of a given construction, the end to be achieved by the statute, and the statute's legislative history." *Id.* at ¶ 38, 442 P.3d at 389; *see Martinez v. People*, 2020 CO 3, ¶ 17, 455 P.3d 752, 756; *People v. Carrillo*, 2013 COA 3, ¶¶ 12–13, 297 P.3d 1028, 1030; *See People v. Jones*, 2020 CO 45, ¶¶ 54-55.

As noted above, the URL provides that "[i]n the event there is a general reassessment of taxable property valuations," the base and increment valuations "shall be proportionately adjusted in accordance with such reassessment." § 31-25-107(9)(e), C.R.S. Because the URL fails to define what "general reassessment" means in the context of the statute the Court finds the term ambiguous. As a result, the Court must determine what the term "general reassessment" means by referring to methods of statutory interpretation.

Plaintiff argues that a valid interpretation of subsection 107(9)(e), and that of its experts, is that the term "general reassessment" refers only to a change in the "statewide general assessment rate of real property." Plaintiff's Response at p. 19. It therefore asserts that the base value is otherwise frozen absent such a rate change. *See id.* at pp. 13-14. Defendant contends that this interpretation conflicts with the statute's plain language by adding words to the statute that the General Assembly did not include. *See People v. Diaz*, 347 P.3d 621, 624 (Colo. 2015) (courts "do not add words to the statute or subtract words from it"). The statute does not mention

the word "rate" or even any synonym of "rate" in relation to property tax. At the same time, the statute does use the word "percentage" specifically and solely when discussing sales tax. The fact that this same subsection specifically mentions a change in the "percentage" for sales tax rather than "rate" is persuasive evidence that if the General Assembly intended to tie the proportional adjustment provision to a change in the tax rate, it knew how to do so. *See People v.* Jones, 2020 CO 45. Plaintiff AURA also supports its contention that the base valuation in a TIF area must at all times remain "frozen" except in the event of an assessment rate change by referring to a handout the bill sponsor distributed when HB 75-1099 was first introduced. See Plaintiff's Response at pp. 13-14 and Exhibit 1. But the Defendant points out that that this handout was distributed several months before the amendments to the bill that added subsection 107(9)(e) occurred, and those amendments eliminated the frozen base concept. The handout was provided as part of the bill consideration in early committee meetings in February 1975. See Declaration of Thomas W. Snyder at ¶ 5 ("Exhibit 1 is included in the materials maintained as part of the record for the February 19, 1975 meeting of the House Committee on Local Government in consideration of HB-1099."); see also Exhibit 12 (the engrossed bill as it existed on March 19, 1975, which did not include subsection 107(9)(e)). But, in June 1975, an amendment to the bill added subsection 107(9)(e) – the general reassessment provision at issue – which cancelled the concept of a "frozen" base valuation and required the base to be proportionally adjusted during reassessment. See Exhibit 13 (June 3, 1975 final version of the bill). Importantly, it was at this point on June 3, 1975 that the general reassessment provision was added, and the bill became law. In

other words, when the complete legislative history is reviewed, it is persuasive that the Plaintiff's reliance on the "handout" is not conclusive.

As the term "general reassessment" is not specifically defined in the URL, the court may turn to the dictionary definition to assist it in understanding the plain language of the statute. *Massihzadeh v. Seaver*, 457 P.3d 739, 742 (Colo. App. 2019). "Assessment is the act of placing a value for tax purposes upon the property of a particular taxpayer." *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14, 17 (Colo. 1997) (quoting *Lamm v. Barber*, 565 P.2d 538, 545 (Colo. 1977), overruled on other grounds by *Bd. of County Comm'rs v. FiftyFirst General Assembly*, 599 P.2d 887, 891 (Colo. 1979)). Black's Law Dictionary defines "reassessment" as follows: "reassessment. (18c) 1. A reappraisal, revaluation, or review; a recalculation of an amount payable or owed. 2. Tax. An official revaluation of property, often repeated periodically, for the levying of a tax." ASSESSMENT, Black's Law Dictionary (11th ed. 2019) (emphasis added). The term "general" is defined in Black's Law Dictionary as "[p]ertaining to, or designating, the genus or class, as distinguished from that which characterizes the specifics or individual. Universal, not particularized; as opposed to special. Principal or central; as opposed to local. Open or available to all, as opposed to select. Obtaining commonly, or recognized universally; as opposed to particular. Universal or unbounded; as opposed to limited. GENERAL, Black's Law Dictionary (11th Ed. 2019).

The Court therefore hold that the term, "general reassessment" refers to the regularly occurring revaluation of property. There is nothing in the definition or statute that limits general reassessment to taking place only where there is a change in the statewide general reassessment rate (and only of real property), as AURA contends. Second, AURA's interpretation ignores that fact that the reassessment rate is only a part of the formula used when revaluing property to

determine the assessed value, as plainly stated in the applicable statutes. The basic reassessment formula is: Actual value x Assessment Rate = Assessed Value. See § 39-1-121(1)(c), C.R.S. ("'Valuation for assessment' means the actual value of any real or personal property multiplied by the assessment percentages specified in section 3 of article X of the state constitution."); see also § 39-1-104(3) ("'Valuation for assessment', as used in this section and in articles 1 to 13 of this title, means the same as the term 'assessed valuation' as that term may appear in the laws of this state."). As the formula illustrates, the total valuation for assessment includes as part of the formula whatever residential (and other applicable property type) assessment rate is determined by the legislature. In other words, the rate is part of the formula for determining assessed value; it does not determine the occasions on which general reassessment takes place, as AURA argues. Third, AURA's interpretation disregards the fact that personal property is very often included within TIF areas. Personal property, which is listed and valued separately from real property, is reassessed every year, while real property is currently reassessed every two years. See § 39-1-105 ("All taxable property, real and personal, within the state at twelve noon on the first day of January of each year, designated as the official assessment date, shall be listed, appraised, and valued for assessment in the county wherein it is located on the assessment date. Personal property shall be listed and valued separately from real property."); *see also* §39-1- 104(12.3)(a)(I) ("The actual value of personal property shall be determined … [and based upon three Property tax bills are then generated from the assessed value by multiplying the assessed value for an individual property by the applicable mill levy for that area (i.e. $10,000 assessed value X 0.090 (90 mills) = $900 tax) the Administrator's] procedures and instructions for the annual

appraisal of such property that will include a factor or factors to adjust the actual value for the current year of assessment to the level of value applicable to real property.") The assessment rate for personal property has changed only once since 1975 – when it was reduced from 30% to 29% with the passage of the Gallagher Amendment in 1982. The Court is therefore persuaded that the legislature did not intend to limit "general reassessment" to only those instances when the real property assessment rate changes. See § 39- 1-104(1). Doing so does not comport with the plain language of the statute, it would render the phrase "general reassessment" functionally meaningless, and would be improper. "In construing a statute, we ascertain and effectuate the General Assembly's intent...[and] apply the plain meaning of the statutory language, give consistent effect to all parts of a statute, and construe each provision in harmony with the overall statutory design." *Larrieu v. Best Buy Stores,* L.P., 303 P.3d 558, 560-61 (Colo. 2013).

Finally, there appears to be no dispute that the Assessor methodology follows the ARL. See Exhibit 10 at Plaintiff's Response to Interrogatory No. 6 ("...AURA does not contend in this proceeding that the Assessor's methodology has differed from the Subjective Causation Methodology specified in the Assessor's Reference Library..."). Chapter 12 of Volume II of the ARL, which contains the TIF processes and procedures, was reviewed and approved by the SBOE at its October 5, 2016 hearing, and later by the state legislature afterwards for compliance with the URL. It interprets the URL to say that the "base" and "increment" allocation must be proportionately adjusted in accordance with the statutory reassessment cycle, which also comports with the plain language of the URL. This Court gives deference to this interpretation of the URL's general reassessment provision because it was provided by the Administrator who is charged with its enforcement. *See, e.g., Aurora v. Bd. of Cty. Comm'rs*, 919 P.2d 198, 203 (Colo. 1996) ("We often consider and give appropriate deference to the contemporaneous and

consistent interpretation of a statute made by a governmental entity charged with its interpretation or enforcement.") In conclusion, the TIF general reassessment provision applies regardless of whether there is any change in assessment rates and whenever there is a "reassessment" (i.e, a "reappraisal" or "revaluation of property" as the term is defined by Black's Law Dictionary) of property values within a TIF area. Under current law, as stated above, this occurs every two years for real property and every year for other property types and not just during a statewide assessment of real property. See § 39-1-104(10.2), C.R.S.

In addition the legislative history further supports the Assessor's understanding of the phrase "general reassessment." *See Grant v. People*, 48 P.3d 543, 546 (Colo. 2002) (courts turn to legislative history when a statute is ambiguous). The base and increment valuations are proportionately adjusted in accordance with this cycle. But the statutes did not always contain a consistent reassessment cycle. In 1975, when the URL was repealed and re-enacted to include the TIF and general reassessment provisions, no standard recurring reassessment cycle existed. At that time, Colorado's General Assembly managed the property tax scheme by implementing (or not implementing) different base year levels of value, effectively "freezing" the value as of the 16 specified base year. In 1977, for example, the General Assembly adopted legislation that "froze" the level of value for assessment purposes at the 1973 base year level of value, where it remained for seven years. *See* the following excerpt from page 46 of the Colorado Legislative Council's Research Publication No. 281, December 1983, titled "Reassessments" and detailing the history of the statutory base year level of value:

Reassessments – Base Year Revisions

Currently, property is valued using a "base year" concept. Under this concept the current value of a piece of property is based upon what it was worth in some prior year. In 1977 the General

Assembly adopted House Bill 1452 which froze the level of value for assessment. The purposes of this legislation was to protect property owners from experiencing large increases in their property tax due to the tremendous increase in housing values during much of the 1970's. During the 1983 session, House Bill 10004 was passed which accelerates the base year level of value and the reassessment cycle according the following schedule.

Assessement Year	Base Year/Level of Value
1983 through 1985	1977
1986 through 1987	1984
1988 and thereafter	two year cycle

The purpose in accelerating the base year and shortening the reassessment cycle is to provide a more current year value of property, to promote better taxpayer understanding of the assessment of his property, and to reduce the impact of the shifts between base years.[6]

As shown, real property values were reassessed in 1983-1985 at a 1977 base year level of value, and in 1986-1987 at a 1984 level of value. Exhibit 11 at p. 46 (excerpt above). Finally, the two-year reassessment cycle for real property began in 1988, 17 effective for the 1989 assessment year; and as noted above, the two-year cycle continues today. *Id.* In other words, prior to HB 10004, originally a "general reassessment" was something the legislature previously had to actively implement. But years after the URL's general reassessment provision was adopted in 1975, the legislature eliminated its micromanagement of the process and eventually implemented a recurring two-year "general reassessment" cycle for real property. The Court agrees that the legislature adopted this automatic and consistent process to promote better taxpayer understanding of the assessment of his or her property, and to reduce the negative impacts of steep and sudden tax increases that were resulting from the previous method of setting value levels. The Court has received no evidence supporting a finding that the legislature intended to tie the TIF general reassessment proportional adjustment to only those times where there is a change in the statewide general assessment rate of real property, which may or may not

[6] This publicly-available publication is attached to the Plaintiff's Response to PMSJ as Exhibit 11, and the Court takes judicial notice of this statutory history. *See In re Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005*, 814 P.2d 875, 880 (Colo. 1991); *Industrial Comm'n v. Milka*, 410 P.2d 181, 183–84 (1966).

change on a consistent basis. Indeed, doing so would have undercut the very purposes discussed above of setting a regular and consistent general reassessment schedule.

The Court is also cognizant that, if the legislature had actually intended to tie the proportional adjustment to changes in the assessment rate, then it would have done so by including the word "rate" or "percentage" when discussing "general reassessment of taxable property valuations" and "valuations for assessment" in the language of § 31-25-107(9)(e). The fact that these words are not included in the language of the general reassessment provision as it pertains to property taxes (as opposed to its discussion of "the sales tax percentage levied in any municipality"), evidences intent that the provision was not so limited.

After a review of these issues, the Court agrees that as shown by the plain language of the statute and the legislative history, the Assessor's actions at issue were required by and compliant with the URL. Accordingly, AURA's remaining claims stemming from its interpretation of the meaning of "general reassessment" fail. As there appears to be no dispute that the Defendant Assessor was following the direction of the URL and that the Court finds that the Defendant's interpretation of "general assessment" is supported by the law, the Court therefore finds that the Assessor is entitled to summary judgment on the merits. Because it finds for the Defendant on these claims, the Court necessarily rules against the claims asserted by Plaintiff AURA on Summary Judgment.

CONCLUSION

For the Foregoing reasons the Court **GRANTS** the Defendant's Motion for Summary Judgment. Accordingly, this Court enters judgment against AURA's remaining claims against

the Assessor and in favor the Assessor. The Plaintiff's Motion for Summary Judgment is therefore DENIED. The Court Trial set for June 16 is therefore vacated.

SO ORDERED this 10 day of June, 2020.

BY THE COURT

Honorable Elizabeth A. Weishaupl
District Court Judge