

**THE SELECTIVE REASSESSMENT OF REAL PROPERTY IN NEW YORK
STATE: IS ANNUAL REASSESSMENT THE SOLUTION?**

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The selective reassessment of real property is a recurring issue in Tax Certiorari proceedings in New York State courts, particularly, in the 9th Judicial District² which covers Westchester, Putnam, Rockland, Dutchess and Orange counties. It may be, as suggested by one commentator³, that the incidence of selective reassessment, at least, to the extent it involves reassessment to market on sale, is relatively rare in Nassau County and New York City because those taxing authorities "annually reassess all parcels (and hence) [r]eassessment on sale is thus permissible as part of these broader reassessment programs "⁴. In the 9th Judicial District, however, only a few smaller municipalities in 2005⁵ were in the New York State Office of Real Property Services' [OPRS] annual reassessment program [now referred to as "Guidelines for the Annual Aid Program"⁶],

i.e., Pelham and the Town of Rye in Westchester County; Kent, Patterson, Southeast and Putnam Valley in Putnam County and Milan, Northeast, Red Hook and Rhinebeck in Dutchess County.

Annual Reassessment Programs

The ORPS annual reassessment program is based upon R.P.T.L. § 1573⁷ and, according to ORPS, the advantages of participating in the program include achieving assessment equity for taxpayers, local control over the equalization rate, improved bond ratings, fewer court challenges to assessments and increased land assessments⁸. Generally, the ORPS program has been well received⁹ and has been implemented by many municipalities¹⁰. In addition, such a program implies that arms-length, representative sales may be reassessed, using as one factor, the sales prices of the subject property and comparable properties in the neighborhood " so long as the implicit policy is applied even-handedly to all similarly situated property "'¹¹. This would seem to apply to the initial assessment of newly created property¹², as well. In any event, because so few municipalities in the 9th Judicial District participate in an annual reassessment program, tax certiorari cases including those alleging selective reassessment are more likely to arise.

What Is Selective Reassessment?

The policy of selective reassessment has been found by the U.S. Supreme Court and New York Courts to be a violation of the equal protection clause of both the United States Constitution and the New York State Constitution. But what exactly is selective reassessment? Generally, selective reassessment involves discrimination and a violation of equal protection [See e.g., Allegheny Pittsburgh Coal Co. v. County Commission of Webster County¹³ (" The Equal Protection Clause ` applies only to taxation which in fact bears unequally on persons or property of the same class `...As long as general adjustments are accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders, the Equal Protection Clause is satisfied...[I]t does not require immediate general adjustment on the basis of the latest market developments. In each case, the constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners "); Corvetti v. Town of Lake Pleasant¹⁴ (" We reach the same conclusion with regard to plaintiffs' 42 USC § 1983 equal protection claim since their allegation that ` it was the official policy of [defendants] to assess property pursuant to a ` welcome neighbor ` policy of arbitrarily increasing the assessments of new residents of the

town..."); Matter of Fred Chasalow v. Board of Assessors¹⁵ (" It has also been held that ' gross disparities ' in the taxation of similarly situated taxpayers can constitute a violation of the constitutional right to equal protection of the laws...if a classification between taxpayers is palpably arbitrary or involved an invidious discrimination, an equal protection violation will be found "); Nash v. Assessor of Town of Southampton¹⁶ (" a tax classification will only violate constitutional equal protection guarantees ' if the distinction between the classes is ' palpably arbitrary ' or amounts to ' invidious discrimination ' ")].

Specific Forms Of Selective Reassessment

Selective reassessment takes many forms and has also been referred to as " reassessment upon sale "¹⁷ and " improper assessment "¹⁸.

Reassessment Upon Sale At Market Rate

First, selective reassessment may involve reassessing individual properties at market rate when they are sold [See e.g., Matter of Charles Krugman v. Board of Assessors of the Village of Atlantic Beach¹⁹ (" The respondents' practice of

selective reassessment of only those properties in the village which were sold during the prior year contravenes statutory and constitutional mandates. In order to achieve uniformity and ensure that each property owner is paying an equitable share of the total tax burden the assessors, at a minimum, were required to review all property on the tax rolls in order to assess the properties at a uniform percentage of their market value. The respondents' disparate treatment of new property owners on the one hand and long term property owners on the other has the effect of permitting property owners who have been longstanding recipients of public amenities to bear the least amount of their cost... This approach lacks any rational basis in law and results in invidious discrimination between owners of similarly situated property "); Matter of Stern v. City of Rye²⁰ (" However, rather than adding the value of the improvement to the prior assessment...the properties were reassessed to a comparable market value that included the value of the improvement..."); Matter of Feldman v. Assessor of Town of Bedford²¹ (" The petitioner also claims that the challenged assessment was part of a systematic endeavor by the respondents to reassess only those properties in the town that were sold "); Matter of DeLeonardis v. City of Mount Vernon²² (" Despite the respondents' claim that the Assessor did not rely on the purchase price in determining the assessed value, the Assessor did not submit an affidavit in

response to the petitioner's allegation that the Assessor had in fact testified that he did so "); Feigert v. Assessor of the Town of Bedford²³ (" The petitioners herein have offered substantial proof that the 1991 assessment of their property is based directly upon the resale of the property in 1983 "); Schwaner v. Town of Canandaigua²⁴ (" the petition sets forth specific examples of gross disparities in the assessed value of allegedly comparable property "); Matter of Reszin Adams v. Welch²⁵ (" respondent's ` selective reassessment ` was not rationally based and therefore was improper "); Matter of Averbach v. Board of Assessors²⁶ (allegations that " assessments were made pursuant to an illegal ` welcome stranger ` assessment procedure "); Gray v. Huonker²⁷ (house selectively reassessed " that was not based on a policy ` applied evenhandedly to all similarly situated property within the [jurisdiction] ` "); Matter of Markim v. The Town of Orangetown²⁸ (selective reassessment found).

High Coefficients Of Dispersion

Second, a high coefficient of dispersion²⁹ may be a sign of selective reassessment³⁰ [See e.g., Waccabuc Construction Corp. v. Assessor of Town of Lewisboro³¹(" A high coefficient of dispersion indicates a high degree of variance with respect to

the assessment ratios under consideration. A low coefficient of dispersion indicates a low degree of variance. In other words, a low coefficient of dispersion indicates that the parcels under consideration are being assessed at close to an equal rate (see 9 NYCRR 185-4.4) "); Matter of Fred Chasalow v. Board of Assessors³²].

Condominium Conversions

Third, an increase in assessment based solely on the conversion of a 150 residential apartment complex to a condominium may involve selective reassessment [See e.g., Matter of Towne House Village Condominium v. Assessor of the Town of Islip³³ (" Such an increase in assessment is prohibited by statute [R.P.T.L. § 339-y[1][b]; R.P.T.L. 581]. Even were the assessor not prohibited from assigning a higher assessment ...there was no rational basis in law for reassessing only the subject property. Such a ` selective reassessment ` is improper as a denial of equal protection guarantees ")].

Reassessments Based On More Than Value Of Improvements

Fourth, reassessments based on more than the value of

subsequent improvements to an existing structure may involve selective reassessment [See e.g., Matter of Stern v. City of Rye³⁴ (" reassessment upon improvement is not illegal in and of itself. Here, the petitioners' properties were reassessed after recent improvement. However, rather than adding the value of the improvement to the prior assessment...the properties were reassessed to a comparable market value that included the value of the improvement..."); Matter of Villemena v. City of Mount Vernon³⁵ (no selective reassessment found); Teja v. The Assessor of the Town of Greenburgh³⁶ (" Petitioners' argument, briefly stated, is that the only allowable increase in valuation above the assessment of June 1, 2001 could be one based solely on the addition of the kitchen appliances, which cost \$14,513.28. Anything more than this they contend is a ' welcome stranger ' increase based on the purchase price of \$1,175,000.00 paid in April 2002. (There was no town-wide reassessment of all similarly situated properties.). This valuation technique is unconstitutional because it is a selective reassessment which denies equal protection guarantees "); Carter v. The City of Mount Vernon³⁷ (assessment increased 48.9% after sale based upon " ' certain improvements ' having been made to the property, without proper permits, by the prior owner " ; assessor failed to " even identify, or enumerate just what specific renovations or improvements " were made; assessment held invalid); Joan Dale

Young v. The Town of Bedford³⁸ (" the prohibition against reassessment of improved property ` utilizing the recent purchase price as a basis for determining the increase in assessed value of a property on which improvements have been made ` (does not apply) to the initial assessment of newly created property on vacant, unimproved land ")]. And lastly there have been cases in which the issue of selective reassessment has been raised but no equal protection violations have been found or the case was remanded for trial³⁹.

Conclusion

There appears to be a relationship between a municipality's non-participation in an annual reassessment program and the incidence of tax certiorari cases alleging selective reassessment.

ENDNOTES

1. Thomas A. Dickerson is a Justice of the New York State Supreme Court sitting in White Plains and is responsible for Tax Certiorari and Condemnation Proceedings in the 9th Judicial District. Justice Dickerson is also the author of Class Actions: The Law of 50 States, Law Journal Press, 2005, Travel Law, Law Journal Press, 2005 and over 200 articles on a variety of legal topics many of which are available at www.classactionlitigation.com/library/ca_articles.html

2. See e.g., Matter of Stern v. City of Rye, 268 A.D. 2d 482, 702 N.Y.S. 2d 100 (2d Dept. 2000)(selective reassessment); Matter of Feldman v. Assessor of Town of Bedford, 236 A.D. 2d 399, 653 N.Y.S. 2d 28 (2d Dept. 1997)(selective reassessment); Matter of DeLeonardis v. City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 (2d Dept. 1996)(selective reassessment); Feigert v. Assessor of the Town of Bedford, 204 A.D. 2d 543, 544, 614 N.Y.S. 2d 200 (2d Dept. 1994)(selective reassessment); Matter of Markim v. The Town of Orangetown, 6 Misc. 3d 1042(A) (West. Sup. 2005) and 9 Misc. 3d 1115(A) (West. Sup. 2005)(selective reassessment); Joan Dale Young v. The Town of Bedford, 2005 WL 2230399 (West. 2005)(no selective reassessment); Matter of MGD Holdings v. Town of Haverstraw, 8 Misc. 3d 1013(A) (West. Sup. 2005)(motion for summary judgment denied; fact issues to be resolved at trial); Matter of Villemena v. City of Mount Vernon, 7 Misc. 3d 1020(A) (West. Sup. 2005)(no selective reassessment); Carter v. The City of Mount Vernon, Index No: 19301/02, J. Rosato, Decision November 25, 2003 (selective reassessment); Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004 (selective reassessment).

3. Siegel, Reassessment on Sale, New York Law Journal, August 2, 2005, p. 16.

4. Id.

5. It is anticipated that in Dutchess County in 2006 three municipalities will be doing revaluations and in 2007 a consortium of seven additional municipalities will also be undertaking revaluation.

6. ORPS Guidelines for the Annual Aid Program at <http://www.orps.state.ny.us/reassess/annualaid/overview.htm>

7. Id (" To encourage (annual reassessment) New York State [R.P.T.L. § 1573] provides State Aid of up to \$5 per eligible parcel to municipalities that keep assessments at 100% of market value each year. For special assessing units [New York City and Nassau County], uniformity must be maintained within each class...Section 1573 of the RPTL (requires eligible assessing units to) (1) Annually maintain assessments at 100 percent of market value, (2) Annually conduct a systematic analysis of all locally assessed properties, (3) Annually revise assessments where necessary to maintain the stated uniform percentage of value, (4) Implement a program to physically inspect and re-appraise each property at least once every six years and (5) comply with applicable statutes and rules ").

8. See N. 5, supra.

9. See ORPS Evaluation of the New York State Office of Real Property Services Annual Reassessment Program, www.orps.state.ny.us/reassess/exsummary.htm.

10. See ORPS Selective Assessing vs. Fair Assessing, www.orps.state.ny.us/reassess/selectivevsfair.cfm (" In 2004, approximately, 370 cities and towns, ranging in size from towns with a few hundred parcels to New York City, are conducting reassessments. Of those, approximately 280 are committed to keeping assessments at marker value annually ").

11. Stern v. Assessor of the City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 482 (2d Dept. 2000).

12. See e.g., Joan Dale Young v. The Town of Bedford, 2005 WL 2230399 (West. 2005)(" it is appropriate on the initial assessment of newly created property for an Assessor to consider, among other factors, [and " so long as the implicit policy is applied even-handedly to all similarly situated property "] " the current market value (of the newly created property and of comparable properties in the Town of Bedford) to reach a tax assessment " .

13. Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, 488 U.S. 336, 344, 109 S. Ct. 633 (1989).

14. Corvetti v. Town of Lake Pleasant, 227 A.D. 2d 821, 823, 642 N.Y.S. 2d 420 (3d Dept. 1996)

15. Matter of Fred Chasalow v. Board of Assessors, 202 A.D. 2d 499, 609 N.Y.S. 2d 27 (2d Dept. 1994).
16. Nash v. Assessor of Town of Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 (2d Dept. 1991).
17. N. 2, supra, (" unless there is a planned revaluation or a comprehensive plan to review the assessments of all properties in the assessing unit, reassessment on sale violates the Equal Protection Clauses of the federal and New York state constitutions ").
18. Schwaner v. Town of Canandaigua, 17 A.D. 2d 1068, 1069, 794 N.Y.S. 2d 233 (4th Dept. 2005).
19. Matter of Charles Krugman v. Board of Assessors of the Village of Atlantic Beach, 141 A.D. 2d 175, 184, 533 N.Y.S. 2d 495 (2d Dept. 1988).
20. Matter of Stern v. City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 (2d Dept. 2000).
21. Matter of Feldman v. Assessor of Town of Bedford, 236 A.D. 2d 399, 653 N.Y.S. 2d 28 (2d Dept. 1997).
22. Matter of DeLeonardis v. City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 (2d Dept. 1996).
23. Feigert v. Assessor of the Town of Bedford, 204 A.D. 2d 543, 544, 614 N.Y.S. 2d 200 (2d Dept. 1994).
24. Schwaner v. Town of Canandaigua, 17 A.D. 2d 1068, 1069, 794 N.Y.S. 2d 233 (4th Dept. 2005).
25. Matter of Reszin Adams v. Welch, 272 A.D. 2d 642, 707 N.Y.S. 2d 691 (3d Dept. 2000).
26. Matter of Averbach v. Board of Assessors, 176 A.D. 2d 1151, 575 N.Y.S. 2d 964 (3d Dept. 1991).
27. Gray v. Huonker, 305 A.D. 2d 1081, 758 N.Y.S. 2d 731 (4th Dept. 2003).
28. Matter of Markim v. The Town of Orangetown, 6 Misc. 3d 1042(A) (West. Sup. 2005) and 9 Misc. 3d 1115(A) (West. Sup. 2005).

29. See ORPS Assessment Equity In New York: Results From The 2004 Market Value Survey, www.orps.state.ny.us/ref/pubs/cod/2004mvs/reporttext.htm (" The primary means of measuring assessment uniformity is a statistic known as the coefficient of dispersion (COD). The COD measures the extent to which the assessment ratios from a given roll exhibit dispersion around a midpoint...Assessing units with good assessing practices have low CODs, showing little deviation of individual assessment ratios from the median ratio...Conversely, an assessing unit with little assessment uniformity would have widely varying assessment ratios among the sampled parcels, resulting in high dispersion around the median and, therefore, a high COD. Widely varying ratios result in unequal tax bills for properties of equal value ").

30. A high COD may also be explained by changing market conditions and the decision not to participate in an annual assessment program. See e.g., Wilkes, A Legal Analysis of Assessment Practices and Property Tax Equity in the Village of Bronxville, September 12, 2005 (" An assessor in a community that does not regularly revalue might with all good intention seek to moderate the amount of assessment increases in an effort to minimize overall dispersion in the assessment roll. Indeed, with a coefficient of dispersion (COD) of just under 20%... Bronxville's assessment roll is not egregiously random (as some Westchester rolls are) ") and Eckert, Assessment Practices and Effective Tax Rate Variations in Bronxville, September 8, 2005 (" While the 19.6% COD may be legally acceptable under New York State case law, our opinion is that the variations in effective tax rates inherent in the Bronxville assessment represent a significant departure from both good assessment practices... "), both available at www.villageofbronxville.com, Village Assessor tab.

31. Waccabuc Construction Corp. v. Assessor of Town of Lewisboro, 166 A.D. 2d 523, 524, 560 N.Y.S. 2d 805 (2d Dept. 1990).

32. Matter of Fred Chasalow v. Board of Assessors, 202 A.D. 2d 499, 500, 609 N.Y.S. 2d 27 (2d Dept. 1994).

33. Matter of Towne House Village Condominium v. Assessor of the Town of Islip, 200 A.D. 2d 749, 607 N.Y.S. 2d 87 (2d Dept. 1994).

34. Matter of Stern v. City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 (2d Dept. 2000).

35. Matter of Villemena v. City of Mount Vernon, 7 Misc. 3d 1020(A) (West. Sup. 2005).

36. Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004 .

37. Carter v. The City of Mount Vernon, Index No: 19301/02, J. Rosato, Decision November 25, 2003.

38. Joan Dale Young v. The Town of Bedford, 2005 WL 2230399 (West. 2005).

39. Such cases have involved a delay in the implementation of a comprehensive reassessment program [See e.g., Nash v. Assessor of Town of Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 (2d Dept. 1991) (" Whether the delay in the implementation of a comprehensive reassessment of all of the parcels in a taxing jurisdiction can result in equal protection violation...it cannot be said, on the present record, that the Town acted in bad faith...")], the reassessment of 150 waterfront parcels because of " the rapid rate of appreciation of property " [See e.g., Mundinger v. Assessor of the City of Rye, 187 A.D. 2d 594, 590 N.Y.S. 2d 122 (2d Dept. 1992) (" The reassessment program... would be justified...if waterfront residential property appreciated at a higher rate than nonwaterfront residential property ")], the use of two different methods of assessing Class I property [See e.g., Matter of Fred Chasalow v. Board of Assessors, 176 A.D. 2d 800, 803, 575 N.Y.S. 2d 129 (2d Dept. 1991) (" Indeed, it is well settled that a system of assessment which is challenged on the ground of inequality may nevertheless survive judicial scrutiny if the assessing authority demonstrates that the classification which results in unequal treatment bears a rational relation to the achievement of a legitimate governmental objective ")], the reclassification of Class II property to Class I property [See e.g., Matter of Acorn Ponds v. Board of Assessors, 197 A.D. 2d 620, 621, 603 N.Y.S. 2d 491 (2d Dept. 1993) (" There is no proof in the record that the failure to reassess all Class I property when the petitioner's property was reassessed resulted in disparate tax treatment of a constitutional dimension ")] and the method of dividing " the Town into four neighborhoods for valuation purposes " [See e.g., Matter of Akerman v. Assessor of Town of Hardenburg, 211 A.D. 2d 916, 917, 621 N.Y.S. 2d 154 (3d Dept. 1995) (petitioners have not established that the formulas used by respondents were improper or inequitable or that the assessments violate constitutional requirements "); Matter of MGD Holdings v. Town of Haverstraw, 8 Misc. 3d 1013(A) (West. Sup. 2005) (motion for

summary judgment denied; fact issues to be resolved at trial].