Tax Certiorari & Condemnation in the 9th Judicial District

By Thomas A. Dickerson

This is my third year presiding over the Tax Certiorari and Condemnation Law Part of the 9th Judicial District, which covers Westchester, Putnam, Rockland, Dutchess, and Orange Counties ("Tax Cert Part"). The Tax Cert Part manages numerous matters seeking, among other forms of relief, exemptions from real property taxes, reductions in real property tax assessments, and the resolution of a variety of eminent domain issues including valuation. The attorneys,[1] assessors,[2] and appraisers who have appeared in our Tax Cert Part are generally professional and knowledgeable and a pleasure to work with.

The Tax Cert Part also maintains a Web site[3] that contains Part rules and calendar[4] procedures, downloadable decisions, articles, publications, and important links.

Types of Property

The issues raised in the Tax Cert Part – particularly valuation and exemption issues – and the way in which they are analyzed and resolved have much to do with the type of real property in dispute. For example, the following types of real property have come before us within the context of trials or motions in either tax certiorari or eminent domain proceedings: two electricity-generating power plants,[5] one, oil- and gas-fired, the other, primarily, coal-fired (59-day trial); farmland including residence, barn and shed;[6] a continuing care retirement community[7] (73-day trial); a "home for the elderly";[8] a senior housing complex;[9] an adult home;[10] a branch bank;[11] single-family residences[12] including 11 townhouse-style structures;[13] apartment complexes;[14] shopping centers;[15] office buildings;[16] contaminated industrial property;[17] a burned-down bowling alley;[18] a luncheonette;[19] and various other commercial properties.[20]

Tax Exemptions

With respect to entities seeking an exemption from real property taxes, we have examined a cellular telephone tower,[21] a Free Loan Society,[22] a School Tax Relief (STAR) exemption,[23] a continuing care retirement community,[24] an adult home,[25] property owned by a religious order,[26]

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The Salvation & Praise Deliverance Center,[27] residences for clergy[28] and cultural organizations.[29]

Some Procedural Issues

We have also addressed a number of procedural issues involving the interpretation and application of 22 N.Y.C.R.R. § 202.59 to tax certiorari[30] matters and 22 N.Y.C.R.R. § 202.61 to eminent domain proceedings,[31] the proper service of tax certiorari petitions[32] and whether taxpayers are required to permit appraisers to perform interior inspections.[33]

Recent Developments

There have been a number of recent developments in the tax certiorari and condemnation law areas, including the continuing fallout in the realm of eminent domain law from the U.S. Supreme Court's decision in *Kelo v. City of New London*, the efforts of some communities to consider and implement revaluation programs, and the increasing incidence of selective reassessment cases in the tax certiorari field.

Proposed Changes in Eminent Domain Law

The U.S. Supreme Court's decision in *Kelo v. City of New London*[34] approved the taking of private property for transfer to benefit and complement the area surrounding facilities for a corporation, Pfizer, Inc.

> Those who govern the City were not confronted with the need to remove blight . . . but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference. . . . We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.

The *Kelo* decision has generated many articles[35] and encouraged some New York State legislators to propose changes in New York's Eminent Domain Procedure Law providing for, among other things, greater control by elected officials,[36] greater compensation[37] and, even, jury trials on valuation.[38]

Selective Reassessment vs. Annual Reassessment

The selective reassessment of real property is a recurring issue in tax certiorari proceedings in New York State courts, particularly in the 9th Judicial District.[39] It may be, as suggested by one commentator,[40] 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."[41] In the 9th Judicial District, however, only a few smaller municipalities in 2005[42] were in the New York State Office of Real Property Services (ORPS) annual reassessment program (now referred to as "Guidelines for the Annual Aid Program"[43]), *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. A number of other communities outside of Westchester County are in the midst of implementing revaluations as of this writing.

Because so few municipalities in the 9th Judicial District participate in an annual reassessment program, tax certiorari cases alleging selective reassessment are more likely to arise.

Another community in Westchester County, the Village of Bronxville, has recently approved a village-wide revaluation "aimed at making property taxes fair and equitable and ending widespread tax discrepancies."[44] The Village of Bronxville had previously initiated two studies,[45] the results of which are available on the Village's Web site.[46] The studies provide a valuable resource for communities interested in revaluation.

Annual Reassessment Programs

The ORPS annual reassessment program is based upon RPTL § 1573[47] 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 assessments.[48] Generally, the ORPS program has been well received[49] and has been implemented by many municipalities[50] statewide. In addition, such a program implies that arm's-length, representative properties that have sold may be reassessed, using, as one factor, the sale 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.'"[51] This would seem to apply to the initial assessment of newly created property[52] as well. In any event, because so few municipalities in the 9th Judicial District participate in an annual reassessment program, tax certiorari cases 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. As the Supreme Court wrote in the often-cited case of *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*:[53]

> 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."

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New York courts have also considered selective reassessment as a violation of equal protection.[54]

Specific Forms of Selective Reassessment

Selective reassessment takes many forms and has also been referred to as "reassessment upon sale"[55] and "improper assessment."[56] First, selective reassessment may involve reassessing individual properties at market rate when they are sold.[57] Second, a high coefficient of dispersion[58] may be a sign of selective reassessment.[59] Third, an increase in assessment based solely on the conversion of a 150-unit residential apartment complex to a condominium may involve selective reassessment.[60] Fourth, reassessments based on more than the value of subsequent improvements to an existing structure may involve selective reassessment.[61] 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 trial.[62]

Conclusion

The issues raised in the tax certiorari, tax exemption and condemnation law areas are exciting, indeed, and of considerable importance to municipal taxing authorities and real property taxpayers. ■

1. Westchester County Bar Association *at* <www.wcbany.org>; Tax Certiorari and Condemnation Law Committee, William E. Sulzer, Chairman, *at* <WES@GCVPC.com>; Rockland County Bar Association *at* <www.rocklandbar.org>, Tax Grievance Committee, Mark Goodfriend at <MNDJS2@aol.com> and Alan Simon, Chairpersons; Nassau County Bar Association *at* <www.nassaubar.org>, Condemnation and Tax Certiorari Committee, Edward C. Mohlenhoff, Chair, *at* <ecm@nytaxappeal.com>; Suffolk County Bar Association *at* <www.scba.org>, Tax Certiorari Committee, Scott Desimone, Chair; New York County Lawyers' Association *at* <www.nycla.org>, Condemnation Law Committee, Michael Rikon, Chair, *at* <mrikon@ggrgpc.com>. *See also* American Bar Association, Property Tax Committee, Melinda Blackwell, Chair, *at* <Melinda@txtax.com>, and David C. Wilkes, Vice Chair, *at* <dwilkes@huffwilkes.com>; Real Property, Probate and Trust Law Section, Condemnation Committee, Michael Rikon, Chair, *at* <mrikon@ggrgpc.com>; Monroe County Bar Association at <www.mcba.org>; Tax Certiorari Committee, Robert A. Feldman, Esq., Chairman, *at* <mailto:raf@wnhr.com>.

2. Westchester County Chapter John McGrory, IAO, President, *at* <jmcgrory@town.new-castle.ny.us>; New York State Assessors' Association *at* <www.nyassessor.com>, Patrick Duffy, President, *at* <pduffy@townofmanlius.org>; *see also* International Association of Assessing Officers at <www.iaao.org>.

3. <www.nycourts.gov/courts/9jd/taxcert.shtml>.

4. Calendar information is available <www.courts.state.ny.us>. For additional assistance please contact Ms. Brenda V. Mechmann, Principal Law Clerk; Mr. Efraim Nieves, Associate Court Clerk; and Ms. Laura Puja, Secretary to the Judge.

5. *See, e.g.*, *In re Orange & Rockland Utilities, Inc.*, 4 Misc. 3d 1005(A) (Sup. Ct., Rockland Co. 2004), *subsequent proceedings*, 5 Misc. 3d 1010(A), 798 N.Y.S.2d 711 (Sup. Ct., Rockland Co. 2004), *and* 7 Misc. 3d 1017(A), 801 N.Y.S.2d 238 (Sup. Ct., Rockland Co. 2005).

6. *Johnson v. Kelly*, 2006 N.Y. Slip Op. 50649(U), 2006 WL 1023917 (Sup. Ct., Orange Co. Apr. 17, 2006) (appraisal stricken, petition dismissed).

7. *Miriam Osborn Mem. Home Ass'n v. Assessor of Rye*, 4 Misc. 3d 1009(A) (Sup. Ct., Westchester Co. 2004), *subsequent proceedings*, 6 Misc. 3d 1011(A) (Sup. Ct., Westchester Co. 2005), 6 Misc. 3d 1035(A) (Sup. Ct., Westchester Co. 2005), 7 Misc. 3d 1004(A) (Sup. Ct., Westchester Co. 2005), 8 Misc. 3d 1008(A) (Sup. Ct., Westchester Co. 2005), 9 Misc. 3d 1019 (Sup. Ct., Westchester Co. 2005); 11 Misc. 3d 1059(A) (Sup. Ct., Westchester Co. 2006), *and* 11 Misc. 3d 1065(A) (Sup. Ct., Westchester Co. 2006).

8. *Application of 325 Highland LLC v. Assessor of Mount Vernon*, 5 Misc. 3d 1018(A), 799 N.Y.S.2d 165 (Sup. Ct., Westchester Co. 2004) (recent purchase price in arm's-length transaction is best measure of true value of property).

9. *Nyack Plaza Housing Ass'n v. Town of Orangetown*, 7 Misc. 3d 1011(A), 801 N.Y.S.2d 237 (Sup. Ct., Rockland Co. 2005) (motion to preclude respondent from introducing evidence at trial of assessment class ratio granted; assessor required to assess all properties within its boundaries at a single, uniform overall percentage of value).

10. *Adult Home at Erie Station, Inc. v. Assessor of Middletown*, 8 Misc. 3d 1010(A), 801 N.Y.S.2d 776 (Sup. Ct., Orange Co. 2005). *Compare Jamil v. Vill. of Scarsdale Planning Bd.*, 4 Misc. 3d 642, 778 N.Y.S.2d 670 (Sup. Ct., Westchester Co. 2004), *aff'd*, 24 A.D.3d 552, 808 N.Y.S.2d 260 (2d Dep't 2005) (planning board's approval of assisted-living facility as special use in residential district upheld).

11. *Bank of N.Y. v. Assessor of Bronxville*, 4 Misc. 3d 1014(A), 791 N.Y.S.2d 867 (Sup. Ct., Westchester Co. 2004) (motion for mistrial granted due to illness of expert witness).

12. *Bock v. Assessor of Scarsdale*, 11 Misc. 3d 1052(A) (Sup. Ct., Westchester Co. 2006) (motion for summary judgment denied; no selective reassessment found); *Villamena v. City of Mount Vernon*, 7 Misc. 3d 1020(A) (Sup. Ct., Westchester Co. 2005) (new inspection and assessment ordered of residence; no

selective reassessment found); *Falbe v. Tax Assessor of Cornwall*, 8 Misc. 3d 1004(A) (Sup. Ct., Orange Co. 2005) (order directing village to pay tax refund vacated because of misrepresentations); *Young v. Town of Bedford*, 9 Misc. 3d 1107(A), 808 N.Y.S.2d 921 (Sup. Ct., Westchester Co. 2005) (use of current market value for initial assessment of newly created property; no selective reassessment found); *McCready v. Assessor of Ossining*, 2006 N.Y. Slip Op. 50719 (Sup. Ct., Westchester Co. 2006) (screening procedure for updating and correcting inventory data fair and reasonable; no selective reassessment found.

13. *Markim v. Assessor of Orangetown*, 9 Misc. 3d 1115(A), 808 N.Y.S.2d 918 (Sup. Ct., Rockland Co. 2005) (assessor failed to adequately explain assessment methodology; selective reassessment found), *modified*, 11 Misc. 3d 1063(A) (Sup. Ct., Rockland Co. 2006).

14. *MGD Holdings Hav, LLV v. Assessor of Haverstraw*, 8 Misc. 3d 1013(A), 801 N.Y.S.2d 779 (Sup. Ct., Rockland Co. 2005) (motion for summary judgment denied), *modified*, 11 Misc. 3d 1054(A) (Sup. Ct., Rockland Co. 2006) (motion to reargue granted and upon reargument earlier decision adhered to).

15. *Midway Shopping Ctr. v. Town of Greenburgh*, 11 Misc. 3d 1071(A) (Sup. Ct., Westchester Co. 2006).

16. *Reckson Operating P'ship LP v. Town of Greenburgh*, 2 Misc. 3d 1005(A), 784 N.Y.S.2d 923 (Sup. Ct., Westchester Co. 2004) (because purchasers of commercial buildings buy an "income stream" the income capitalization approach is the best method of determining value); *2 Perlman Dr., LLC v. Bd. of Assessors*, 9 Misc. 3d 382, 800 N.Y.S.2d 816 (Sup. Ct., Orange Co. 2005) (RPTL § 727(1) Moratorium; two exceptions reviewed); *MRE Realty Corp. v. Assessor of Greenburgh*, 8 Misc. 3d 1027(A), 806 N.Y.S.2d 446 (Sup. Ct., Westchester Co. 2005) (RPTL § 727(1) Moratorium; failure to timely file).

17. *D'Onofrio v. Vill. of Port Chester*, 8 Misc. 3d 1015(A), 801 N.Y.S.2d 777 (Sup. Ct., Westchester Co. 2005) (claimant's motion to exclude evidence at trial as to any diminution in the value of the property by reason of cleanup or remediation costs resulting from alleged environmental contamination granted).

18. *SKM Enters., Inc. v. Town of Monroe*, 2 Misc. 3d 1004(A), 784 N.Y.S.2d 924 (Sup. Ct., Orange Co. 2004) (petitioner's recycled 1996 appraisal submitted at the trial of 1997 tax assessment challenge stricken and 1997 petition dismissed).

19. *In re Vill. of Port Chester*, 10 Misc. 3d 1057(A) (Sup. Ct., Westchester Co. 2005) (claim dismissed as abandoned).

20. *In re Vill. of Port Chester*, 5 Misc. 3d 1031(A), 799 N.Y.S.2d 164 (Sup. Ct., Westchester Co. 2004) (condemnor ordered to pay advance payments into an escrow account pending outcome of condemnee's federal appeal in action challenging the condemnation proceeding on due process grounds; condemnor ordered to pay statutory interest of 6% on the advance payments); *In re Vill. of Haverstraw*, 9 Misc. 3d 1120(A) (Sup. Ct., Rockland Co. 2005) (motion seeking order directing condemnor to tender the remaining balance of the advance payment denied pursuant to Eminent Domain Procedure Law § 304(F) (EDPL)).

21. *Nextel of N.Y., Inc. v. Assessor of Spring Valley*, 4 Misc. 3d 233, 771 N.Y.S.2d 853 (Sup. Ct., Rockland Co. 2004) (Nextel's telecommunications equipment taxable as real property pursuant to Real Property Tax Law § 102(12)(I) (RPTL) or as common law fixtures).

22. *Gemilas Chasudim Keren Eluzer Inc. v. Assessor of Ramapo*, 5 Misc. 3d 1026(A), 799 N.Y.S.2d 160 (Sup. Ct., Rockland Co. 2004) (RPTL § 420-a(1)(a); although property was owned by tax-exempt organization it was not used primarily for the charitable activities of the society).

23. *Brodie v. Office of the Assessor*, 8 Misc. 3d 1001(A) (Sup. Ct., Rockland Co. 2005) (claim for STAR tax exemption barred by statute of limitations).

24. *Miriam Osborn Mem. Home Ass'n v. Assessor of Rye*, 4 Misc. 3d 1009(A) (Sup. Ct., Westchester Co. 2004), *subsequent proceedings*, 6 Misc. 3d 1011(A) (Sup. Ct., Westchester Co. 2005), 6 Misc. 3d 1035(A) (Sup. Ct., Westchester Co. 2005), 7 Misc. 3d 1004(A) (Sup. Ct., Westchester Co. 2005), 8 Misc. 3d 1008(A) (Sup. Ct., Westchester Co. 2005), 9 Misc. 3d 1019 (Sup. Ct., Westchester Co. 2005); 11 Misc. 3d 1059(A) (Sup. Ct., Westchester Co. 2006), *and* 11 Misc. 3d 1065(A) (Sup. Ct., Westchester Co. 2006).

25. *Adult Home at Erie Station v. Assessor of Middletown*, 8 Misc. 3d 1010(A), 801 N.Y.S.2d 237 (Sup. Ct., Orange Co. 2005) (request for tax exemption pursuant to RPTL § 420-1(1)(a) denied).

26. *Foreclosure of Tax Liens by Town of Mount Pleasant*, No. 03-11004 (Sup. Ct., Westchester Co. March 8, 2004) *available at* <www.nycourts.gov/courts/9jd/TacCert_pdfs/legionofchrist.pdf> (motion to stay Town of Mount Pleasant's tax lien enforcement proceeding denied; taxpayers required to pay a disputed tax prior to challenging the propriety of the tax in a court proceeding).

27. *Salvation & Praise Deliverance Ctr., Inc. v. Assessor & Bd. of Assessment Review of Poughkeepsie*, 6 Misc. 3d 1021(A), 800 N.Y.S.2d 356 (Sup. Ct., Dutchess Co. 2005) (bar claim action granted; RPTL Art. 7 petition dismissed as moot).

28. *Congregation Knesset Israel v. Assessor of Ramapo*, 8 Misc. 3d 1021(A), 803 N.Y.S.2d 17 (Sup. Ct., Rockland Co. 2005) (motions for summary judgment denied; synagogue seeks tax exemption for residence in which rabbi resides; whether rabbi full time officiant or a part-time clergyman must be resolved at trial); *Congregation Sherith Yisoel Vilednki v. Town of Ramapo*, 5 Misc. 3d 1027(A), 799 N.Y.S.2d 159 (Sup. Ct., Rockland Co. 2005) (motion seeking permission to depose the tax assessor denied).

29. *Otrada, Inc. v. Assessor of Ramapo*, 9 Misc. 3d 1116(A), 808 N.Y.S.2d 919 (Sup. Ct., Rockland Co. 2005) (assessor reduced 100% tax exemption to 67%; 100% tax exemption for 2003 restored), *modified sub nom. Russian Aid Ass'n v. Town of Ramapo*, 11 Misc. 3d 1058(A) (Sup. Ct., Rockland Co. 2006).

30. *Rose Mount Vernon Corp. v. Assessor of Mount Vernon*, 1 Misc. 3d 906(A), 781 N.Y.S.2d 628 (Sup. Ct., Westchester Co. 2003), *aff'd*, 15 A.D.3d 585, 791 N.Y.S.2d 572 (2d Dep't 2005) (notes of issue for 1996–2002 vacated pursuant to 22 N.Y.C.R.R. § 202.21(e) and tax assessment review proceedings for 1996–1999 dismissed for failure to file income and expense statements with Westchester County Clerk pursuant to 22 N.Y.C.R.R. § 202.59(b), (d)(1)); *Miriam Osborn Mem. Home Ass'n v. Assessor of Rye*, 4 Misc. 3d 1009(A) (Sup. Ct., Westchester Co. 2004) (discovery of petitioner's balance sheets for all years in question to aid in 22 N.Y.C.R.R. § 202.59(c) audit granted); *Midway Shopping Ctr. v. Town of Greenburgh*, 11 Misc. 3d 1071(A) (Sup. Ct., Westchester Co. 2006) (notes of issue and petitions dismissed; lack of authority and standing and failure to comply with 22 N.Y.C.R.R. § 202.59(b), (d)(1)).

31. *In re Rockland County Sewer Dist. No. 1*, 9 Misc. 3d 1106(A), 806 N.Y.S.2d 448 (Sup. Ct., Rockland Co. 2005) (note of issue and certificate of readiness dismissed for failure to exchange trial appraisals pursuant to 22 N.Y.C.R.R. § 202.61(a)(1)).

32. *See, e.g., Majaars Realty Ass'n v. Town of Poughkeepsie*, 10 Misc. 3d 1061(A), 809 N.Y.S.2d 482 (Sup. Ct., Dutchess Co. 2005) (petition dismissed for failure to serve the superintendent of schools pursuant to RPTL § 708(3)); *275 N. Middletown Rd. v. Kenney*, 10 Misc. 3d 1067(A) (Sup. Ct., Rockland Co. 2006) (motion to dismiss petition pursuant to RPTL § 708(3) denied; service on secretary to superintendent of schools sufficient; no prejudice shown); *Commerce Dr. Assocs. LLC v. Bd. of Assessment Review*, 10 Misc. 3d 1071(A) (Sup. Ct., Orange Co. 2005) (motion to dismiss petition pursuant to RPTL § 702(2) for improperly serving Town of Waywayanda instead of Town of Woodbury denied; no prejudice shown); *In re Orange & Rockland Utilities, Inc.*, 11 Misc. 3d 1051(A) (Sup. Ct., Rockland Co. 2006) (motion to dismiss petition pursuant to RPTL § 708(3) for failure to serve superintendent of schools granted).

33. *Schlesinger v. Town of Ramapo*, 11 Misc. 3d 697, 807 N.Y.S.2d 865 (Sup. Ct., Rockland Co. 2006) (motion pursuant to 22 N.Y.C.R.R. § 202.59(e) to require taxpayer to permit an appraiser to do an interior inspection in order to complete a preliminary and trial ready appraisal denied; review of building permits on file would provide a reasonable alternative means of evaluating the interior of residence).

34. *Kelo v. City of New London*, __U.S.__, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005).

35. *See, e.g.*, Scharfenberg, *Yes, Towns Can Seize Land, But Aren't There Limits?*, N.Y. Times Sunday Edition, Westchester Section, Feb. 5, 2006, p. 1; Brenner, *Homes Taken, Lives Rebuilt*, New York Times Sunday Edition, Westchester Section, July 31, 2005, p. 1; David C. Wilkes & John D. Cavallaro, *This Land Is Your Land?*, N.Y. St. B.J. (Oct. 2005) p. 10.

36. Goldstein & Rikon, *Brodsky Bill Attacks the Real Problem With Condemnation Powers*, N.Y.L.J., Oct. 26, 2005, p. 3 (describing a bill proposed by Assemblyman Richard Brodsky: "it provides that the elected officials of each town . . . shall approve or disapprove any exercise of any power to condemn . . . by majority vote subject to executive approval"). Caher, *"Kelo"-Related Bills Pass Senate Judiciary Body*, N.Y.L.J., May 3, 2006, p. 2 ("Spurning calls to go slow, the state Senate Judiciary Committee yesterday advanced four bills by three different lawmakers intent on safeguarding New Yorkers. . . . They are S5938 . . . [t]he bill 'clarifies that the exercise of eminent domain powers should be reserved for those public infrastructures and services commonly provided by government' such as 'transportation, public safety, recreation, water supply and sanitation facilities'[;] . . . S5961 . . . would amend the state Constitution to bar the taking or transfer of private property to another private party for purposes of economic development. S5936 . . . would amend the Eminent Domain Procedure Law to permit the state to take property for economic development reasons only in blighted areas[;] S7358 . . . would prohibit the use of eminent domain to transfer land from one private owner to another").

37. *See* Bradley, *Seeking a Balance in Eminent-Domain Law Use*, The Journal News, Letters to Editor, Feb. 13, 2006, p. 4B (describing Assemblyman Bradley's proposed eminent-domain legislation); *see also Eminent Dispute*, The Journal News, Editorial Section, Jan. 30, 2006, p. 48; Kettner, *Examining the Nuances of Eminent Domain Law*, The Journal News, Letters to Editor, Feb. 17, 2006, p. 68.

38. *See* Bradley, note 37, *supra*.

39. *See, e.g., Stern v. Assessor of Rye*, 268 A.D.2d 482, 702 N.Y.S.2d 100 (2d Dep't 2000) (selective reassessment); *Feldman v. Assessor of Bedford*, 236 A.D.2d 399, 653 N.Y.S.2d 38 (2d Dep't 1997) (selective reassessment); *DeLeonardis v. Assessor of Mount Vernon*, 226 A.D.2d 530, 532, 641 N.Y.S.2d 83 (2d Dep't 1996) (selective reassessment); *Feigert v. Assessor of Bedford*, 204 A.D.2d 543, 544, 614 N.Y.S.2d 200 (2d Dep't 1994) (selective reassessment); *Bock v. Assessor of Scarsdale*, 11 Misc. 3d 1052(A) (Sup. Ct., Westchester Co. 2006) (no selective reassessment found); *Markim v. Town of Orangetown*, 6 Misc. 3d 1042(A), 800 N.Y.S.2d 349 (Sup. Ct., Rockland Co. 2005), *subsequent proceeding*, 9 Misc. 3d 1115(A), 808 N.Y.S.2d 918 (Sup. Ct., Rockland Co. 2005) (selective reassessment), *modified*, 11 Misc. 3d 1063(A) (Sup. Ct., Rockland Co. 2006); *Young v. Town of Bedford*, 9 Misc. 3d 1107(A), 808 N.Y.S.2d 921 (Sup. Ct., Westchester Co. 2005) (no selective reassessment); *MGD Holdings Hav, LLC v. Assessor of Haverstraw*, 8 Misc. 3d 1013(A), 801 N.Y.S.2d 779 (Sup. Ct., Rockland Co. 2005) (motion for summary judgment denied), 11 Misc. 3d 1054(A) (Sup. Ct., Rockland Co. 2006) (motion to reargue granted and upon reargument earlier decision adhered to); *Villemena v. City of Mount Vernon*, 7 Misc. 3d 1020(A), 801 N.Y.S.2d 243 (Sup. Ct., Westchester Co. 2005) (no selective reassessment); *Carter v. City of Mount Vernon*, No. 19301/02 (Nov. 25, 2003) (Rosato, J.) (selective reassessment); *Teja v. Assessor of Greenburgh*, No. 14628/03 (May 27, 2004) (Rosato, J.) (selective reassessment).

40. Siegel, *Reassessment on Sale*, N.Y.L.J., Aug. 2, 2005, p. 16.

41. *Id*.

42. 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.

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

44. *See, e.g.*, Adely, *Bronxville Board OKs Revaluation*, The Journal News, March 14, 2006, p. 12A ("'Revaluation is the only viable option to restore equity in our tax rolls,' Mayor Mary Marvin said last night"); Adely, *Village Revisits Taxation Fairness*, The Journal News, Jan. 24, 2006, p. 1 ("Tax talk continues to dominate Bronxville as the village proceeds with a review of its tax-assessment practices, which came under fire last year over allegations that some properties were undervalued while other were unfairly overtaxed. Village taxpayers began a push for revaluation after two residents released a report charging that tax assessments were inequitable and ignored changes to home values when homeowners did major renovations and expansions"); Medina, *The Tax Assessment Report That Roared*, New York Times Sunday Edition, Real Estate Section, March 6, 2005, p. 5.

45. David C. Wilkes, *A Legal Analysis of Assessment Practices and Property Tax Equity in the Village of Bronxville*, September 12, 2005 ("if the Village Board should choose to direct a revaluation, it should do so following a thorough modeling of the tax impacts that would occur and detailed consideration of any means of mitigating the most severe impacts, such as through the Homestead Tax Option and transitional assessments"); Robert Eckert, *Assessment Practices and Effective Tax Rate Variations in Bronxville*, Sept. 8, 2005 ("The following study examines Bronxville's assessment practices relative to its handling of building permits and examines effective tax rate variations inherent in the current assessments. . . . 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. . . . The Village should conduct further studies to examine strategies for bringing effective tax rates in line with the standard articulated in the New York State Real Property Tax Law"); *see* Medina, *A Showdown on Taxes in Bronxville*, N.Y. Times Sunday Edition, Westchester Section, July 24, 2005, p. 1.

46. *See* Village of Bronxville homepage <www.villageofbronxville.com> (follow "Departments & Services" hyperlink; then "Village Assessor" hyperlink).

47. Eckert, note 45, *supra* ("To encourage (annual reassessment) New York State [RPTL § 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").

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

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

50. *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 market value annually").

51. *Stern v. Assessor of Rye*, 268 A.D.2d 482, 483, 702 N.Y.S.2d 100 (2d Dep't 2000).

52. *See, e.g.*, *Young v. Town of Bedford*, 9 Misc. 3d 1115(A), 808 N.Y.S.2d 921 (Sup. Ct., Westchester Co. 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-andedly 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").

53. 488 U.S. 336, 344 (1989).

54. *Corvetti v. Town of Lake Pleasant*, 227 A.D.2d 821, 823, 642 N.Y.S.2d 420 (3d Dep't 1996) ("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"); *Chasalow v. Bd. of Assessors*, 202 A.D.2d 499, 609 N.Y.S.2d 27 (2d Dep't 1994) ("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 Southampton*, 168 A.D.2d 102, 109, 571 N.Y.S.2d 951 (2d Dep't 1991) ("A tax classification will only violate constitutional equal protection guarantees 'if the distinction between the classes is 'palpably arbitrary' or amounts to 'invidious discrimination'").

55. Siegel, *Reassessment on Sale*, N.Y.L.J., Aug. 2, 2005, p. 16 ("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").

56. *Schwaner v. Collins*, 17 A.D.3d 1068, 1069, 794 N.Y.S.2d 233 (4th Dep't 2005).

57. *See, e.g.*, *Krugman v. Bd. of Assessors of Atlantic Beach*, 141 A.D.2d 175, 184, 533 N.Y.S.2d 495 (2d Dep't 1988) ("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"); *Stern v. Assessor of Rye*, 268 A.D.2d 482, 702 N.Y.S.2d 100 (2d Dep't 2000) ("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."); *Feldman v. Assessor of Bedford*, 236 A.D.2d 399, 653 N.Y.S.2d 38 (2d Dep't 1997) ("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"); *DeLeonardis v. Assessor of Mount Vernon*, 226 A.D.2d 530, 641 N.Y.S.2d 83 (2d Dep't 1996) ("utilizing the recent purchase price as a basis for determining the increase in assessed value of property on which improvements have been made pursuant to building permits, while similarly situated properties which have not been improved are not subject to reassessment, results in discriminatory treatment of the petitioner by imposing upon him a tax burden not imposed upon owners of similarly situated property"); *Feigert v. Assessor of Bedford*, 204 A.D.2d 543, 614 N.Y.S.2d 200 (2d Dep't 1994) ("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. Collins*, 17 A.D.3d 1068, 794 N.Y.S.2d 233 (4th Dep't 2005) ("the petition sets forth specific examples of gross disparities in the assessed value of allegedly comparable property"); *Adams v. Welch*, 272 A.D.2d 642, 707 N.Y.S.2d 691 (3d Dep't 2000) ("respondent's 'selective reassessment' was not rationally based and therefore was improper"); *Averbach v. Bd. of Assessors of Delhi*, 176 A.D.2d 1151, 575 N.Y.S.2d 964 (3d Dep't 1991) (allegations that "assessments were made pursuant to an illegal 'welcome stranger' assessment procedure"); *Gray v. Huonker*, 305 A.D.2d 1081, 758 N.Y.S.2d 731 (4th Dep't 2003) (house selectively reassessed "that was not based on a policy 'applied evenhandedly to all similarly situated property within the [jurisdiction]'"); *Markim v. Assessor of Orangetown*, 6 Misc. 3d 1042(A), 800 N.Y.S.2d 349 (Sup. Ct., Rockland Co. 2005) (selective reassessment found).

58. *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").

59. 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.*, David C. Wilkes, *A Legal Analysis of Assessment Practices and Property Tax Equity in the Village of Bronxville* (Sept. 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)"); Joseph K. Eckert, *Assessment Practices and Effective Tax Rate Variations in Bronxville* (Sept. 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 . . . good assessment practices"). *See, e.g.*, *Waccabuc Constr. Corp. v. Assessor of Lewisboro*, 166 A.D.2d 523, 560 N.Y.S.2d 805 (2d Dep't 1990) ("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 N.Y.C.R.R. 185-4.4)"); *Chasalow v. Bd. of Assessors*, 202 A.D.2d 499, 609 N.Y.S.2d 27 (2d Dep't 1994).

60. *Towne House Vill. Condo. v. Assessor of Islip*, 200 A.D.2d 749, 607 N.Y.S.2d 87 (2d Dep't 1994) ("Such an increase in assessment is prohibited by statute [Real Property Law § 339-y(1)(b); RPTL § 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").

61. *See, e.g.*, *Stern v. City of Rye*, 268 A.D.2d 482, 702 N.Y.S.2d 100 (2d Dep't 2000) ("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 . . . "); *Villemena v. City of Mount Vernon*, 7 Misc. 3d 1020(A), 801 N.Y.S.2d 779 (Sup. Ct., Rockland Co. 2005) (no selective reassessment found; new assessment ordered); *Bock v. Assessor of Scarsdale*, 11 Misc. 3d 1052(A) (Sup. Ct., Westchester Co. 2006) (assessor presented facially reasonable explanation for changing assessments on real property based upon the cost of improvements which appears to be fair and comprehensive; no selective reassessment found); *Teja v. Assessor of Greenburgh*, No. 14628/03 (May 27, 2004) (Rosato, J.) ("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 townwide reassessment of all similarly situated properties.). This valuation technique is unconstitutional because it is a selective reassessment which denies equal protection guarantees"); *Carter v. City of Mount Vernon*, No. 19301/02 (Nov. 25, 2003) (Rosato, J.) (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); *Young v. Town of Bedford*, 9 Misc. 3d 1107(A), 808 N.Y.S.2d 921 (Sup. Ct., Westchester Co. 2005) ("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").

62. *See, e.g.*, *Nash v. Assessor of Southampton*, 168 A.D.2d 102, 571 N.Y.S.2d 951 (2d Dep't 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 . . . , [in the reassessment of 150 waterfront parcels because of] the rapid rate of appreciation of property"); *Mundinger v. Assessor of Rye*, 187 A.D.2d 594, 590 N.Y.S.2d 122 (2d Dep't 1992) ("The reassessment program . . . would be justified . . . if waterfront residential property appreciated at a higher rate than non-waterfront residential property," and using two different methods of assessing Class I property); *Chasalow v. Bd. of Assessors*, 202 A.D.2d 499, 609 N.Y.S.2d 27 (2d Dep't 1994) ("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); *Acorn Ponds v. Bd. of Assessors*, 197 A.D.2d 620, 603 N.Y.S.2d 491 (2d Dep't 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" considering the method of dividing "the Town into four neighborhoods for valuation purposes"); *Akerman v. Assessor of Hardenburg*, 211 A.D.2d 916, 621 N.Y.S.2d 154 (3d Dep't 1995) (petitioners have not established that the formulas used by respondents were improper or inequitable or that the assessments violate constitutional requirements and the methodology for partially assessing real property); *MGD Holdings Hav, LLC v. Town of Haverstraw*, 8 Misc. 3d 1013(A), 801 N.Y.S.2d 779 (Sup. Ct., Rockland Co. 2005) (motion for summary judgment denied; fact issues to be resolved at trial); *Markim v. Assessor of Greenburgh*, 6 Misc. 3d 1042(A), 800 N.Y.S.2d 349 (Sup. Ct., Rockland Co. 2005) (partial assessments appropriate upon notice to taxpayers).