

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D25837
W/kmg

_____AD3d_____

Argued - December 18, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2008-09953

DECISION & ORDER

In the Matter of David Weiner, et al., respondents,
v Board of Assessors and/or Assessor of Town/Village
of Harrison, et al., appellants.

(Index Nos. 17864/06, 19021/07)

Ira S. Levy, Rye Brook, N.Y., for appellants.

Herman Katz Cangemi & Clyne, LLP, Garden City, N.Y. (Kevin M. Clyne, Robert S. Katz, and W. Scott Kershaw of counsel), for respondents.

In two related proceedings pursuant to Real Property Tax Law article 7 to review real property tax assessments for the tax years 2007 and 2008, respectively, the Assessor of the Town/Village of Harrison and the Board of Assessment Review of the Town/Village of Harrison appeal, as limited by their brief, from so much an order of the Supreme Court, Westchester County (LaCava, J.) entered September 17, 2008, as granted that branch of the petitioners' motion which was for summary judgment on the causes of action alleging improper and unlawful tax assessment for tax years 2007 and 2008 on the basis of selective reassessment, in effect, granted those branches of the petitions which were to annul the real property assessments for tax years 2007 and 2008, remitted the matter to the Assessor of the Town/Village of Harrison for a new assessment for the tax years 2007 and 2008, and directed that the new assessments were to be determined by adding only the equalized value of the improvements to the subject property to the assessment for tax year 2001, and denied their cross motion for summary judgment dismissing the petitions.

ORDERED that the order is affirmed insofar as appealed from, with costs.

January 26, 2010

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“It is well settled that a system of selective reassessment that has no rational basis in law violates the equal protection provisions of the Constitutions of the United States and the State of New York” (*Matter of Munding v Assessor of City of Rye*, 187 AD2d 594, 595). Nevertheless, “reassessment upon improvement is not illegal in and of itself . . . [n]or is the use of the purchase price or the current market value to reach a tax assessment in and of itself unconstitutional ‘so long as the implicit policy is applied even-handedly to all similarly situated property’” (*Matter of Stern v Assessor of City of Rye*, 268 AD2d 482, 483, quoting *Allegheny Pittsburgh Coal Co. v Commission of Webster Cty.*, 488 US 336, 345; see *Nash v Assessor of Town of Southampton*, 168 AD2d 102).

In this case, there was no evidence that there was a “comprehensive assessment plan . . . to reassess the entire tax roll to reflect the comparable market value of all appreciated properties” (*Matter of Stern v Assessor of City of Rye*, 268 AD2d at 483; see *Matter of DeLeonardis v Assessor of City of Mount Vernon*, 226 AD2d 530, 532). Accordingly, the determination of the Assessor of the Town/Village of Harrison (hereinafter the assessor) to reassess the petitioner’s property based upon its enhanced market value as a result of recent alterations to the property, “rather than adding the value of the improvements to the prior assessment” (*Matter of Stern v Assessor of City of Rye*, 268 AD2d at 483) imposed, upon the property, a discriminatory tax burden not imposed on similarly-situated properties that had also appreciated, but which had no recent improvements (see *Matter of Stern v Assessor of City of Rye*, 268 AD2d 482; *Matter of DeLeonardis v Assessor of City of Mount Vernon*, 226 AD2d at 532; *Matter of Krugman v Board of Assessors of Vil. of Atl. Beach*, 141 AD2d 175, 183-184).

The petitioners established their prima facie entitlement to judgment as a matter of law on the issue of whether the assessor improperly reassessed their property on a selective basis, and the appellants failed to raise a triable issue of fact in opposition. Accordingly, the court properly granted that branch of the petitioner’s motion which was for summary judgment on the causes of action alleging improper and unlawful tax assessments for tax years 2007 and 2008 on the ground of selective reassessment, and properly denied the appellants’ cross motion for summary judgment dismissing the petitions. Consequently, the court properly, in effect, granted those branches of the petitions which were to annul those tax assessments.

RIVERA, J.P., DILLON, BELEN and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court