

The Tax Certiorari & Condemnation Law In The The 9th Judicial District

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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

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www.consumerlaw.org/links/#travel_articles

[" 9th J.D. Tax Cert Part "]. The 9th J.D. Tax Cert Part manages numerous matters seeking, amongst 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 attorneys¹, assessors² and appraisers who have appeared in our Tax Cert Part are very professional and knowledgeable and a pleasure to work with. The 9th J.D. Tax Cert Part also has a website³ which contains Part rules & calendar⁴ procedures, downloadable decisions, articles, publications and important links.

Types Of Property

The issues raised in the 9th J.D. 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 and/or motions in either tax certiorari or eminent domain proceedings: two electricity generating power plants⁵, one, oil and gas fired, the other, primarily, coal fired [59 day trial], farmland including residence, barn and shed⁶, a continuing care retirement community⁷ [73 day trial], a " home for the elderly "⁸, a senior housing complex⁹, an Adult Home¹⁰, a branch bank¹¹,

single family residences¹² including eleven town house style structures¹³, apartment complexes¹⁴, shopping centers¹⁵, office buildings¹⁶, contaminated industrial property¹⁷, a burned down bowling alley¹⁸, a luncheonette¹⁹ and various other commercial properties²⁰.

Tax Exemptions

With respect to entities seeking an exemption from real property taxes we have examined a cellular telephone tower²¹, a Free Loan Society²², a STAR exemption²³, a continuing care retirement community²⁴, an adult home²⁵, property owned by a religious order²⁶, The Salvation & Praise Deliverance Center²⁷, residences for clergy²⁸ and cultural organizations²⁹.

Some Procedural Issues

We have also addressed a number of procedural issues involving the interpretation and application of 22 NYCRR § 202.59 to tax certiorari³⁰ matters and 22 NYCRR § 202.61 to eminent domain proceedings³¹, the proper service of tax certiorari petitions³² and whether taxpayers are required to permit appraisers to perform interior inspections³³.

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 London³⁴, approved the taking of private property for transfer to 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 articles³⁵ including Wilkes & Cavallaro, This Land Is Your Land?³⁶ 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 officials³⁷, greater compensation³⁸ and, even, jury trials on valuation³⁹.

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 District⁴⁰. It may be, as suggested by one commentator⁴¹, 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 "⁴². In the 9th Judicial District, however, only a few smaller municipalities in 2005⁴³ 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"⁴⁴], 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.

Another community in Westchester County, the Village of Bronxville, has recently approved a villagewide revaluation "

aimed at making property taxes fair and equitable and ending widespread tax discrepancies "45. The Village of Bronxville had previously initiated two studies46, the results of which are available on the Village's website47. The studies [Wilkes, A Legal Analysis of Assessment Practices and Property Tax Equity in the Village of Bronxville, September 12, 200548 and Eckert, Assessment Practices and Effective Tax Rate Variations in Bronxville, September 8, 200549] provide a valuable resource for communities interested in revaluation.

Annual Reassessment Programs

The ORPS annual reassessment program is based upon R.P.T.L. § 157350 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 assessments51. Generally, the ORPS program has been well received52 and has been implemented by many municipalities53. 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 \"54. This would seem

to apply to the initial assessment of newly created property⁵⁵, 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 [See e.g., Allegheny Pittsburgh Coal Co. v. County Commission of Webster County⁵⁶ (" 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 Pleasant⁵⁷ (" 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 Assessors⁵⁸ (" 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 Southampton⁵⁹ (" 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 "⁶⁰ and " improper assessment "⁶¹.

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 Beach⁶² (" 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 Rye⁶³ (" 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 Bedford⁶⁴ (" 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 Vernon⁶⁵ (" 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 the Town of Bedford⁶⁶ (" 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 Canandaigua⁶⁷ (" the petition sets forth specific examples of gross disparities in the assessed value of allegedly comparable property "); Matter of Reszin Adams v. Welch⁶⁸ (" respondent's ' selective reassessment ' was not rationally based and therefore was improper "); Matter of Averbach v. Board of Assessors⁶⁹ (allegations that " assessments were made pursuant to an illegal ' welcome stranger ' assessment procedure "); Gray v. Huonker⁷⁰ (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

Orangetown⁷¹ (selective reassessment found).

High Coefficients Of Dispersion

Second, a high coefficient of dispersion⁷² may be a sign of selective reassessment⁷³ [See e.g., Waccabuc Construction Corp. v. Assessor of Town of Lewisboro⁷⁴(" 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 Assessors⁷⁵].

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 Islip⁷⁶ (" 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 Rye⁷⁷ (" 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 Vernon⁷⁸ (no selective reassessment found; new assessment ordered); Matter of Bock v. Assessor of the Town/Village of Scarsdale⁷⁹ (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. The Assessor of the Town of Greenburgh⁸⁰ (" 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 Vernon⁸¹ (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 Bedford⁸² (" 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 ")].

No Equal Protection Violations

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 [See e.g., Nash v. Assessor of Town of Southampton⁸³ (" 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 Rye⁸⁴ (" 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 Assessors⁸⁵(" 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 Assessors⁸⁶ (" 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 ")]; the method of dividing " the Town

into four neighborhoods for valuation purposes " [See e.g., Matter of Akerman v. Assessor of Town of Hardenburg⁸⁷ (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 [See e.g., Matter of MGD Holdings v. Town of Haverstraw⁸⁸ (motion for summary judgment denied; fact issues to be resolved at trial); Matter of Markim v. Assessor of the Town of Greenburgh⁸⁹ (partial assessments appropriate upon notice to taxpayers)] .

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 tax payers .

ENDNOTES

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] & 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 and 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;] of the New York State Assessor's Association [at www.nyassessor.com], John T. Wiley, President, at jtwiley@town.new-windsor.ny.us; 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.

5. See e.g., Matter of Orange and Rockland Utilities, Inc. v. Assessor of the Town of Haverstraw 4 Misc. 3d 1005(A) (Rockland Sup. 2004); 5 Misc. 3d 1010(A) (Rockland Sup. 2004); 7 Misc. 3d 1017(A) (Rockland Sup. 2005).

6. Johnson v. Kelly, Assessor of the Town of Goshen, Index No: 5077/99, Orange County.

7. Matter of Osborn Memorial Home Association v. Assessor of the City of Rye, 4 Misc. 3d 1009(A) (West. Sup. 2004); 6 Misc. 3d 1011(A); 6 Misc. 3d 1035(A) (West. Sup. 2005); 7 Misc. 3d 1004(A) (West. Sup. 2005); 8 Misc. 3d

1008(A) (West. Sup. 2005); 9 Misc. 3d 1019, 800 N.Y.S. 2d 909 (West. Sup. 2005); 11 Misc. 3d 1059(A) (West. Sup. 2006); 11 Misc. 3d 1065(A) (West. Sup. 2006).

8. Matter of 325 Highland LLC v. Assessor of the City of Mount Vernon, 5 Misc. 3d 1018(A) (West. Sup. 2004)(recent purchase price in arm's length transaction best measure of true value of property).

9. Matter of Nyack Plaza Housing Association v. Town of Orangetown, 7 Misc. 3d 1011(A) (Rockland Sup. 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 v. Assessor of the City of Middletown, 8 Misc. 3d 1010(A) (Orange Sup. 2005). Compare: Matter of Jamil v. Village of Scarsdale Planning Board, 4 Misc. 3d 642, 778 N.Y.S. 2d 670 (2004), aff'd 24 A.D. 2d 552, ___N.Y.S. 2d___ (2d Dept. 2005)(planning board's approval of assisted living facility as special use in residential district upheld).

11. Matter of The Bank of New York v. Assessor of the Village of Bronxville, 4 Misc. 3d 1014(A) (West. Sup. 2004)(motion for mistrial granted due to illness of expert witness).

12. Matter of Bock v. Assessor of the Town/Village of Scarsdale, 2006 WL 328503 (West. Sup. 2006)(motion for summary judgment denied; no selective reassessment found); Matter of Villamena v. City of Mount Vernon, 7 Misc. 3d 1020(A) (West. Sup. 2005)(new inspection and assessment ordered of residence; no selective reassessment found); Matter of Falbe v. Tax Assessor of the Town of Cornwall, 8 Misc. 3d 1004(A) (Orange Sup. 2005)(order directing village to pay tax refund vacated because of misrepresentations); Matter of Dale Joan Young v. Town of Bedford, 9 Misc. 3d 1107(A) (West. Sup. 2005)(use of current market value for initial assessment of newly created property; no selective reassessment found).

13. Matter of Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115(A) (Rockland Sup. 2005)(assessor failed to adequately explain assessment methodology; selective reassessment found), mod'd 11 Misc. 3d 1063(A) (Rockland Sup. 2006).

14. Matter of MGD Holdings Hav, LLV v. Assessor of the Town of Haverstraw, 8 Misc. 3d 1013(A) (Rockland Sup. 2005)(motion for summary judgment denied) & 11 Misc 3d 1054(A)(Rockland Sup. 2006)(motion to reargue granted and upon reargument earlier decision adhered to).

15. Matter of Midway Shopping Center v. Town of Greenburgh, 2006 WL 820261 (West. Sup. 2006).

16. Matter of Reckson Operating Partnership LP v. The Town of Greenburgh, 2 Misc. 3d 1005(A) (West. Sup. 2004)(because purchasers of commercial buildings buy an " income stream " the income capitalization approach is the best method of determining value); Matter of 2 Perlman Drive v. Board of Assessors of Village of Spring Valley, 9 Misc. 3d 382, 800 N.Y.S. 2d 816 (Orange Sup. 2005)(R.P.T.L. § 727(1) Moratorium; two exceptions reviewed); Matter of MRE Realty Corp. v. Assessor of the Town of Greenburgh, 8 Misc. 3d 1027(A) (West. Sup. 2005)(R.P.T.L. § 727(1) Moratorium; failure to timely file).

17. Matter of D'Onofrio v. Village of Port Chester, 8 Misc. 3d 1015(A)(West. Sup. 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. Matter of SKM Enterprises, Inc. v. The Town of Monroe, 2 Misc. 3d 1004(A) (Orange Sup. 2004)(petitioner's recycled 1996 appraisal submitted at the trial of 1997 tax assessment challenge stricken and 1997 petition dismissed).

19. Matter of the Village of Port Chester, 10 Misc. 3d 1057(A) (West. Sup. 2005)(claim dismissed as abandoned).

20. Matter of the Village of Port Chester, 5 Misc. 3d 1031(A) (West. Sup. 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); AAA Electricians, Inc. v. Village of Haverstraw, 9 Misc. 3d 1120(A) (Rockland Sup. 2005)(motion seeking order directing condemnor to tender the remaining balance of the advance payment denied pursuant to E.D.P.L. § 304(F)).

21. Matter of Nextel of New York v. Assessor of the Village of Spring Valley, 4 Misc. 3d 233, 771 N.Y.S. 2d 853 (2004)(Nextel's telecommunications equipment taxable as real property

pursuant to R.P.T.L. § 102(12)(I) or as common law fixtures).

22. Matter of Gemilas Chasudim Keren Eluzer Inc. v. Assessor of the Town of Ramapo, 5 Misc. 3d 1026(A) (Rockland Sup. 2004) (R.P.T.L. § 420-1(1)(a); although property was owned by tax exempt organization it was not used primarily for the charitable activities of the society).

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

24. Matter of Osborn Memorial Home Association v. Assessor of the City of Rye, 4 Misc. 3d 1009(A) (West. Sup. 2004); 6 Misc. 3d 1011(A); 6 Misc. 3d 1035(A) (West. Sup. 2005); 7 Misc. 3d 1004(A) (West. Sup. 2005); 8 Misc. 3d 1008(A) (West. Sup. 2005); 9 Misc. 3d 1019, 800 N.Y.S. 2d 909 (West. Sup. 2005); 11 Misc. 3d 1059(A) (West. Sup. 2006); 11 Misc. 3d 1065(A) (West. Sup. 2006).

25. Adult Home at Erie Station v. Assessor of the City of Middletown, 8 Misc. 3d 1010(A) (Orange Sup. 2005) (request for tax exemption pursuant to RPTL § 420-1(1)(a) denied).

26. Matter of Foreclosure of Tax Liens by Town of Mount Pleasant, Index No: 03-11004, (West. Sup. 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. Matter of Salvation & Praise Deliverance Center v. The City of Poughkeepsie, 6 Misc. 3d 1021(A) (Dutchess Sup. 2005) (bar claim action granted; R.P.T.L. Article 7 petition dismissed as moot).

28. Matter of Congregation Knesset Israel v. Assessor of Town of Ramapo, 8 Misc. 3d 1021(A) (Rockland Sup. 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); Matter of Congregation Sherith Yisoel Vilednki v. Town of Ramapo, 5 Misc. 3d 1027(A) (Rockland Sup. 2005) (motion seeking permission to depose the Tax Assessor denied).

29. Otrada, Inc., American Russian Aid Association v. Assessor of the Town of Ramapo, 9 Misc. 3d 1116(A) (Rockland Sup. 2005) (assessor reduced 100% tax exemption to 67%; 100% tax exemption for 2003 restored); mod'd 11 Misc. 3d 1058(A) (Rockland Sup. 2006).

30. Matter of Rose Mount Vernon Corp. v. Assessor of the City of Mount Vernon, 1 Misc. 3d 906(A) (West. Sup. 2003), aff'd 15 A.D. 3d 585, 791 N.Y.S. 2d 572 (2d Dept. 2005)(notes of issue for 1996 through 2002 vacated pursuant to 22 NYCRR § 202.21(e) and tax assessment review proceedings for 1996 through 1999 dismissed for failure to file income and expense statements with Westchester County Clerk pursuant to 22 NYCRR §§ 202.59(b),(d)(1)); Matter of Osborn Memorial Home Association v. Assessor of the City of Rye, 4 Misc. 3d 1009(A) (West. Sup. 2004)(discovery of petitioner's balance sheets for all years in question to aid in 22 NYCRR § 202.59© audit granted); Matter of Midway Shopping Center v. Town of Greenburgh, 2006 WL 820261 (West. Sup. 2006) (notes of issue and petitions dismissed; lack of authority and standing and failure to comply with 22 NYCRR §§ 202.59(b), (d)(1)).

31. Matter of Rockland County Sewer District No. 1, 9 Misc. 3d 1106(A) (Rockland Sup. 2005)(note of issue and certificate of readiness dismissed for failure to exchange trial appraisals pursuant to 22 NYCRR § 202.61(a)(1)).

32. See e.g., Majaars Realty Association v. Town of Poughkeepsie, 10 Misc. 3d 1061(A) (Dutchess Sup. 2005)(petition dismissed for failure to serve the superintendent of schools pursuant to R.P.T.L. § 708(3)); Matter of 275 N. Middletown Road v. Kenny, 10 Misc. 3d 1067(A) (Rockland Sup. 2006)(motion to dismiss petition pursuant to R.P.T.L. § 708(3) denied; service on secretary to superintendent of schools sufficient; no prejudice shown); Matter of Commerce Drive Associates v. Board of Assessment Review, 10 Misc. 3d 1071(A) (Orange Sup. 2005)(motion to dismiss petition pursuant to R.P.T.L. § 702(2) for improperly serving Town of Waywayanda instead of Town of Woodbury denied; no prejudice shown); Matter of Orange & Rockland Utilities, Inc., 2006 WL 297727 (Rockland Sup. 2006)(motion to dismiss petition pursuant to RPTL § 708(3) for failure to serve superintendent of schools granted).

33. Schlesinger v. Town of Ramapo, 807 N.Y.S. 2d 685 (Rockland Sup. 2006)(motion pursuant to 22 NYCRR § 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, 2664-2668, 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, February 5, 2006, p. 1; Brenner, Homes Taken, Lives Rebuilt, New York Times Sunday Edition, Westchester Section, July 31, 2005, p. 1.

36. Wilkes & Cavallaro, This Land Is Your Land?, New York State Bar Association Journal, Vol. 77, No. 8, October 2005, p. 11.

37. Goldstein & Rikon, Brodsky Bill Attacks the Real Problem With Condemnation Powers, New York Law Journal, October 26, 2005, p. 3 (in 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 ").

38. See Bradley, Seeking a balance in Eminent-domain law use, The Journal News, Letters To Editor, February 13, 2006, p. 4B describing Assemblyman Bradley's proposed eminent-domain legislation. See also: Eminent dispute, The Journal News, Editorial Section, January 30, 2006, p. 48 and Kettner, Examining the nuances of eminent domain law, The Journal News, Letters To Editor, February 17, 2006, p. 68.

39. Id.

40. 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 Bock v. Assessor of the Town/Village of Scarsdale, 2006 WL 328503 (West. Sup. 2006)(no selective reassessment found); Matter of Markim v. The Town of Orangetown, 6 Misc. 3d 1042(A) (Rockland Sup. 2005), 9 Misc. 3d 1115(A) (Rockland Sup. 2005)(selective reassessment), mod'd 11 Misc. 3d 1063(A) (Rockland Sup. 2006); Joan Dale Young v. The Town of Bedford, 9 Misc. 3d 1107(A) (West. Sup. 2005)(no selective reassessment); Matter

of MGD Holdings v. Town of Haverstraw, 8 Misc. 3d 1013(A) (Rockland Sup. 2005)(motion for summary judgment denied); 2006 WL 398305 (Rockland Sup. 2006)(motion to reargue granted and upon reargument earlier decision adhered to); 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).

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

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

43. 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.

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

45. 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, January 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 overtaxes. Village taxpayers began a push for revaluation after two residents release a report charging that tax assessments were inequitable and ignored changed 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.

46. Medina, A Showdown On Taxes In Bronxville, N.Y. Times Sunday Edition, Westchester Section, July 24, 2005, p. 1(" Bronxville's board of trustees has commissioned a study by Robert Eckert, a leading expert in property tax assessment and David C. Wilkes, an internationally known real estate lawyer based in Tarrytown ").

47. See www.villageofbronxville.com, Village Assessor tab.

48. 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 ").

49. Eckert, Assessment Practices and Effective Tax Rate Variations in Bronxville, September 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 ").

50. 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 ").

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

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

53. 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 ").

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

55. See e.g., Joan Dale Young v. The Town of Bedford, 9 Misc. 3d 1115(A)(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 ").

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

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

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

59. Nash v. Assessor of Town of Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 (2d Dept. 1991).

60. Siegel, Reassessment on Sale, New York Law Journal, August 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 ").

61. Schwaner v. Town of Cananqdaigua, 17 A.D. 2d 1068, 1069, 794 N.Y.S. 2d 233 (4th Dept. 2005).

62. 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).

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

64. Matter of Feldman v. Assessor of Town of Bedford, 236 A.D. 2d 399, 653 N.Y.S. 2d 28 (2d Dept. 1997).

65. Matter of DeLeonardis v. City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 (2d Dept. 1996).

66. Feigert v. Assessor of the Town of Bedford, 204 A.D. 2d 543, 544, 614 N.Y.S. 2d 200 (2d Dept. 1994).

67. Schwaner v. Town of Canandaigua, 17 A.D. 2d 1068, 1069, 794 N.Y.S. 2d 233 (4th Dept. 2005).

68. Matter of Reszin Adams v. Welch, 272 A.D. 2d 642, 707 N.Y.S. 2d 691 (3d Dept. 2000).

69. Matter of Averbach v. Board of Assessors, 176 A.D. 2d 1151, 575 N.Y.S. 2d 964 (3d Dept. 1991).

70. Gray v. Huonker, 305 A.D. 2d 1081, 758 N.Y.S. 2d 731 (4th Dept. 2003).

71. Matter of Markim v. The Town of Orangetown, 6 Misc. 3d 1042(A) (West. Sup. 2005), 9 Misc. 3d 1115(A) (West. Sup. 2005) mod'd 11 Misc. 3d 1063(A) (Rockland Sup. 2006).

72. 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 ").

73. 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... "),

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

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

76. 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).

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

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

79. Matter of Bock v. Assessor of the Town/Village of Scarsdale, 2006 WL 328503 (West. Sup. 2006).

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

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

82. Joan Dale Young v. The Town of Bedford, 9 Misc. 3d 1107(A) (West. Sup. 2005).

83. Nash v. Assessor of Town of Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 (2d Dept. 1991).

84. Mundinger v. Assessor of the City of Rye, 187 A.D. 2d 594, 590 N.Y.S. 2d 122 (2d Dept. 1992).

85. Matter of Fred Chasalow v. Board of Assessors, 176 A.D. 2d 800, 803, 575 N.Y.S. 2d 129 (2d Dept. 1991).

86. Matter of Acorn Ponds v. Board of Assessors, 197 A.D. 2d 620, 621, 603 N.Y.S. 2d 491 (2d Dept. 1993).

87. Matter of Akerman v. Assessor of Town of Hardenburg, 211 A.D. 2d 916, 917, 621 N.Y.S. 2d 154 (3d Dept. 1995).

88. Matter of MGD Holdings v. Town of Haverstraw, 8 Misc. 3d 1013(A) (Rockland Sup. 2005)(motion for summary judgment denied), 11 Misc. 3d 1054(A)(Rockland Sup. 2006)(motion to reargue granted and upon reargument earlier decision adhered to).

89. Matter of Markim v. Assessor of the Town of Greenburgh, 11 Misc. 3d 1063(A) (Rockland Sup. 2006).