SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of
ALFRED AND SONDRA MARKIM, GEORGE AND ANN BERGERMAN, FRED LOWELL, ROBERT AND MARILYN TIMBERGER, AUDREY MORAN, JOAN AND ROOSEVELT DAY, STEWART KAISER, RICHARD AND LINDA ESPOSITO, CAROL AND HORACE GIBBS, RALPH AND CHERYL BERK, AND MARCIA SIEGEL,

Petitioners,

-against-

THE ASSESSOR OF THE TOWN OF ORANGETOWN,

Respondent.

For a Judgement under Article 78 of the Civil Practice Law and Rules

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DECISION, ORDER & JUDGMENT

Index No:7422-04

DICKERSON, J.

PARADISE LANDING: SELECTIVE REASSESSMENT NO. 5

In this latest examination of the concept of " selective reassessment "[1] this Court is called upon to decide if the Respondent Assessor's explanation[2] [*initial assessment at 80% plus subsequent*

assessment of 20% plus value of improvements, if any[3]] of how and why he assessed in 1997 or 1998 and then reassessed in 1999 the Petitioners' eleven separate town-house style houses is true and, further, is his assessment methodology fair, reasonable and non-discriminatory [See e.g., Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, 488 U.S. 336, 344, 109 S. Ct. 633 (1989)] or is it a form of the prohibited policy of selective reassessment. Stated, simply, the Assessor's methodology was unfair, unreasonable and discriminatory and his reassessment of the subject properties in 1999 is a form of selective reassessment.

Paradise Landing

The Petitioners, either singly or as married couples, own one of eleven separate town-house style houses in the Paradise Landing Home Owner's Association [" Paradise "], located in the Town of Orangetown, Rockland County, New York. The builder completed all of the subject properties by late 1996 or early 1997. The subject properties initially sold in 1996-98, and several have sold again [e.g., the Berks, the Espositos and Marcia Siegel are not original owners of the property]. The sale prices of the town houses were in the range of $300,000 to $700,000 with some of the Petitioners making post purchase improvements in the range of $5,000 to $20,000.[4] The 1997/1998 assessments imposed by the Town of Orangetown Assessor, Brian Kenney, [" the Assessor "] were

in the range of $257,900 to $335,000 and the 1999 assessments were and the current 2004 assessments are in the range of $346,600 to $420,900.[5]

The Article 78 Petition: Selective Reassessment

The Petitioners filed a Notice of Petition pursuant to C.P.L.R. Article 78 challenging " the 1999 assessment increases-and subsequently fixed upon the 2004 Town of Orangetown Assessment Roll...(as among other things violative of) the petitioners' equal protection rights "[6] . The Petitioners allege that the Assessor " fixed assessments upon each Petitioner's single family dwelling... in May 1999 that was higher than each such assessment initially fixed in either 1997 or 1998 ...by between $20,000 to $107,000 despite there having been few improvements [range $5,000 to $20,000]...and since the Town of Orangetown did not carry out a general revaluation of all properties...in any years between 1997 and 2004...each Petitioner's tax burden as determined by their 2004 assessment will be higher than it should be and will be a discriminatory tax burden not imposed on similarly situated properties "[7]. It is further alleged that " by subjecting Petitioners... to the policy...of selectively reassessing recently built homes... based primarily on the Assessor's belief that the market values of said homes had increased[8], while not reassessing all other properties in the Town or all other properties similar to the

subject properties in the town, the Assessor has acted arbitrarily and capriciously, and violated petitioners' equal protection rights."[9]

The Verified Answer

In response the Respondent, the Assessor of the Town of Orangetown, [" the Assessor "], submitted a Verified Answer wherein a First Affirmative Defense and a Third Affirmative Defense were asserted.

First Affirmative Defense: Partial Assessments & Improvements

The First Affirmative Defense states " 9. That the assessments as fixed in 1999 reflected the fact that prior assessments (in 1997 or 1998) were based upon partially completed units... and also did not consider subsequent i(m)provements such as additions, finished basements and decks...11. The Respondent's determination to increase the assessment... was directly related to physical improvements that occurred subsequent to the initial partial assessments which were not full and complete valuations...12. The Petitioners were assessed at the uniform percentage of value using the methodology that existed for all property owners in the Town of Orangetown. At the time said assessments were determined, the increase in the Petitioners 1999 assessments were directly related to unit and site improvements... Respondent is not

bound by the estimated costs of unit improvements submitted with the Petitioner's respective locations for building permits. "

Motion To Dismiss Denied

Thereafter the Assessor made a motion seeking to dismiss the Petition pursuant to C.P.L.R. § 7804 (f) relying upon his Third Affirmative Defense on the grounds that Petitioners' proper remedy, if any, was under R.P.T.L. Article 7 and not C.P.L.R. Article 78. This Court denied the Assessor's motion [see Markim v. Assessor of the Town of Orangetown, 6 Misc. 3d 1042(A)(West. Sup. 2005)(" Petitioners allege that the Assessor's policy regarding the Petitioners' assessments and the 1997, 1998 and 1999 assessment rolls could be described as a policy of ' selective reassessment '... The only issue presently before the Court is whether Petitioners offered sufficient proof to demonstrate that their challenge to the assessment of the subject properties was based upon an allegation that the Assessor's method of reassessing property values was erroneous and, thus, ' the activity challenged should properly be reviewed by way of a collateral proceeding '[10] ")].

Oral Argument

The Court scheduled oral argument on July 18, 2005 for the purpose of clarifying the Assessor's explanation of how and why he assessed the

subject properties in 1997 or 1998 and reassessed the subject properties in 1999. The Assessor and his attorney appeared at Oral Argument and confirmed his earlier statement[11] on the methodology used, i.e., in l997 nine of the eleven subject properties were assessed at 80% of their market value[12] [the Lowell property at 207 Gair Street and the Siegel property at 306 Cottonwood Court were assessed in 1998 but not at 80%[13] and the 80% assessment[14] on the Kaiser property at 211 Erie Court was reduced by stipulation[15]] because they were 80% complete. In 1999 the remaining 20% of market value was added to the assessments and if improvements such as finished basements had been made, the new assessments accounted for them as well[16]. This Court pointed out that the Assessor's explanation was not supported by the actual 1999 percentage assessment increases which instead of being 20% [or 25% of the total assessment] were, according to Petitioners, from 25.01% to 46.99%[17]. The Assessor referred to 301 Cottonwood Court as a sample of his methodology[18] but his explanation did not account for a finished basement[19].

Court Requests A Numerical Explanation

This Court requested that Petitioners and Respondent submit additional papers explaining[20] numerically the Assessor's methodology [" I want the Assessor to explain numerically, justify numerically, his position that first it was eighty, then it was twenty and if he says

that he's putting in improvements, I want to see the numbers on all of this "[21]].

DISCUSSION

In response to this Court's request for an explanation the Petitioners and Respondent submitted additional papers[22] and charts[23] and more charts[24]. After carefully reviewing the new submissions this Court must conclude that the Assessor has completely failed to " explain, numerically " his position that the 1997 or 1998 assessments were 80% of market value because the subject properties were 80% complete, that in 1999 the remaining 20% was added for each property along with the value of improvements such as a finished basement.

Instead the Assessor has presented several explanations which contradict and, certainly, do not clarify, his earlier positions [e.g. (1) use of " mass appraisal technique "[25] which was never mentioned previously[26] and is not adequately explained now, (2) use of averaging techniques instead of explaining " numerically " the 80%, 20% and improvements, if any, assessment methodology which the Assessor previously relied upon (" In specific instances certain properties were increased more and some less on an individual basis from the average 20% due to particular additional improvements...looking at all the unit assessments as a whole...there was a general 20% change "[27]),

(3) use of estimates based on sales prices [" the original 80% were estimates...but in the end the final assessment had to have made mathematical sense as to the sales prices as well...some assessments exceed the 20% difference, some are under it "[28]], and (4) relying ultimately upon market value in 1999 when the Assessor's previous position was that the 1999 assessment reflected the remaining 20% not imposed in 1997 or 1998 plus the cost of any improvements [" the costing methodology is used as one, not the only, method on assessing improvements on entire units as well, however, in the end it is the market value that is the overriding factor when completing the assessment...The only goal for the 1999 assessments is to have them reflect the market value for that year...With regard to the overall methodology used by your deponent the market value is the determining factor in calculating a property's proper assessment level multiplied by the Town's equalization ratio "[29]].

In addition, the Assessor has failed to explain (1) his methodology of costing improvements of the subject properties using estimated costs[30] or actual costs[31] or the Marshall & Swift cost index[32] [and, further, has failed to provide any credible evidence that the value of improvements was actually a component part of the 1999 reassessment of any of the subject properties (" we have not been given any of the facts, figures and calculations that must have gone into this process, as requested by the Court "[33])], (2) the details of his use of a " combination of cost and market mass valuation "[34], (3) why the 1999 assessments on most of

the subject properties [including inconsistent treatment of the non-party property at 308 Cottonwood Court[35]] as described in Petitioners' Charts 3, 4 and 5 are not uniformly 20% or 25% plus the value of improvements[36], (4) why some of the subject properties were assessed based upon the 80% completion rationale when Certificates of Occupancy were issued before or shortly after the March 1, 1997 taxable status date[37] and (5) the numerous errors and anomalies in the application of the " Assessor's new theory " as pointed out by Petitioners[38].

Incoherent & Inexplicable

The Assessor has failed to provide a " coherent (numerically based) explanation "[39] [as this Court had requested] of his 1997, 1998 and 1999 assessments of the subject properties. The Court must agree with the Petitioners that " One is left only with the impression that for unknown reasons (the Assessor) arbitrarily increased all of these assessments, while also favoring some property owners over others "[40].

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 County, 488 U.S. 336, 344, 109 S. Ct. 633 (1989)(" 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 Pleasant, 227 A.D. 2d 821, 823, 642 N.Y.S. 2d 420 (3d Dept. 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..."); Matter of Fred Chasalow v. Board of Assessors, 202 A.D. 2d 499, 609 N.Y.S. 2d 27 (2d Dept. 1994)(" It is well settled that in the area of real property taxation, rough equality, not complete uniformity, is all that is required...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 Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 (2d Dept. 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 ' ")].

Specific Forms Of Selective Reassessment

Selective reassessment takes many forms and has also been referred to as " reassessment upon sale "[41] and " improper assessment "[42].

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 Beach, 141 A.D. 2d 175, 184, 533 N.Y.S. 2d 495 (2d Dept. 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. We can conceive of no legitimate governmental purpose to be served by perpetuating this differential treatment nor do the respondents suggest any such rational basis in their opposing papers. It would appear that the sole purpose of the different classes is to serve administrative convenience by relieving the village of the burden of conducting a total review of the tax roll and instead permitting a piecemeal approach to reassessments. This approach lacks any rational basis in law and results in invidious discrimination between owners of similarly situated property. Thus, the respondents' method of reassessment violates the equal protection clause of both the United States Constitution (U.S. Const. 14th amend.) and the New York State Constitution (N.Y. Const., art. I, § 11)"); Matter of Stern v. City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 (2d Dept. 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..."); Matter of Feldman v. Assessor of Town of Bedford, 236 A.D. 2d 399, 653 N.Y.S. 2d 28 (2d Dept. 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 "); Matter of DeLeonardis v. City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 (2d Dept. 1996)(" 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 Bedford, 204 A.D. 2d 543, 544, 614 N.Y.S. 2d 200 (2d Dept. 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...Accordingly, the Supreme Court properly determined that the 1991 assessment of the petitioners' property was invalid "); Schwaner v. Town of Canandaigua, 17 A.D. 2d 1068, 1069, 794 N.Y.S. 2d 233 (4th Dept. 2005)(challenge by " recent purchasers of lakefront or lakeview property (alleging) that the 2002 assessment constituted an improper assessment because property that was recently acquired was assessed with a larger percentage increase than property that had not been recently acquired...the petition sets forth specific examples of gross disparities in the assessed value of allegedly comparable property "); Matter of Reszin Adams v. Welch, 272 A.D. 2d 642, 707 N.Y.S. 2d 691 (3d Dept. 2000)(" The Commissioner...acknowledged that his assessment was merely based on a visual inspection of the exterior of the buildings at issue and a review of the average sales price of homes in the particular neighborhood...respondent's ' selective reassessment ' was not

rationally based and therefore was improper "); Matter of Averbach v. Board of Assessors, 176 A.D. 2d 1151, 575 N.Y.S. 2d 964 (3d Dept. 1991)(" CPLR article 78 (proceeding charged that) assessments therein were made pursuant to an illegal ' welcome stranger ' assessment procedure, wherein recently sold property was reassessed at a percentage of its sale price (generally 80%) while similarly situated property was not "); Gray v. Huonker, 305 A.D. 2d 1081, 758 N.Y.S. 2d 731 (4th Dept. 2003)(house purchased in August 2000 for $290,000 " at which time the property had recently been reassessed for $135,000 " as part of city wide reassessment; house subsequently reassessed at $235,000 and found to be " selective reassessment that was not based on a policy ' applied evenhandedly to all similarly situated property within the [jurisdiction] '"); Matter of Markim v. The Town of Orangetown, 6 Misc. 3d 1042(A) (West. Sup. 2005) at fn 5 (" The factual basis for this assertion consists of...statements in the Kaiser Aff (' When I asked the Assessor why he had increased my 1999 assessment, he told me the reason was that the assessment of the new homes in Peirmont Landing...were being increased due to higher market values...")].

High Coefficients Of Dispersion

Second, a high coefficient of dispersion may be a sign of selective reassessment [See e.g., Waccabuc Construction Corp. v. Assessor of Town of Lewisboro, 166 A.D. 2d 523, 524, 560 N.Y.S. 2d 805 (2d Dept. 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 NYCRR 185-4.4) “); Matter of Fred Chasalow v. Board of Assessors, 202 A.D. 2d 499, 500, 609 N.Y.S. 2d 27 (2d Dept. 1994)].

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 Islip, 200 A.D. 2d 749, 607 N.Y.S. 2d 87 (2d Dept. 1994)(“ Such an increase in assessment is prohibited by statute...there was no rational basis in law for reassessing only the subject property “)].

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 Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 (2d Dept. 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..."); Matter of Villemena v. City of Mount Vernon, 7 Misc. 3d 1020(A)(West. Sup. 2005)(although the Assessor's reassessment of residential property may have exceeded the actual value of several improvements thus warranting a new inspection and reassessment, " such conduct does not support a finding of ' selective reassessment ' "); Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004 (" 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 Vernon, Index No: 19301/02, J. Rosato, Decision November 25, 2003 (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 Bedford, 2005 WL 2230399 (West. 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 ")]. 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[43].

Unfair, Unreasonable & Discriminatory

This Court finds that the Respondent's methodology in reassessing the subject properties in 1999 was unfair, unreasonable and discriminatory and is a form of selective reassessment. The Assessor decided to partially assess nine [301, 304, 305, 306, 307, 309, 310, 311 Cottonwood, 211 Erie] of the eleven subject properties in 1997 at 80% of market value [211 Erie subsequently reduced by stipulation] and the remaining two properties [306 Cottonwood, 207 Gair] in 1998 at full value. In 1999 the Assessor, instead of adding the remaining 20% of the 1997 determined market value for the nine properties together with the value of any improvements[44], reassessed in 1999 at an " overall market value "[45] using an incoherent and inexplicable methodology.

Consideration Of Market Value

While market value of comparable properties is a proper factor to be considered in assessing newly created property [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 '"[46]] " the current market value (of the newly created property and of comparable properties in the Town of Bedford) to reach a tax assessment "[47])] the Assessor herein was bound by his choice in 1997 of a market value, 80% of which was the basis for his assessment and 20% of which should have been the basis for his 1999 assessment. His choice in 1997 of a market value was not an " estimate " [though the Assessor seeks to belatedly categorize it as such[48]] subject to later manipulation using an incoherent and inexplicable methodology which was plainly unfair, unreasonable and discriminatory.

Conclusion

Accordingly and based upon the foregoing the Petitioners' Petition pursuant to Article 78 of the C.P.L.R. is granted and this Court finds the Assessor's 1999 assessment of the subject properties to have been arbitrary and capricious. The real property assessments for

the 2004 assessment year for the subject properties are vacated and the Assessor shall conduct a new assessment for the calendar year 1999 in accordance with the findings herein and refund any and all taxes overpaid by Petitioners together with applicable interest.

Dated: White Plains, N.Y. 10606
October 18, 2005

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HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

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ENDNOTES

1. This Court has previously examined the policy of selective reassessment in Markim v. Assessor of the Town of Orangetown, 6 Misc. 3d 1042(A)(West. Sup. 2005), Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)(West. Sup. 2005), MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 8 Misc. 3d 1013(A)(West. Sup. 2005) and Dale Joan Young v. The Town of Bedford, 2005 WL 2230399 (West. 2005). See also Siegel, Reassessment on Sale, New York Law Journal, August 2, 2005, p. 16.

2. See e.g., MGD Holding Hav, LLC v. The Assessor of the Town of Haverstraw, 8 Misc. 3d 1013(A) (" Nonetheless the Respondents have provided a facially reasonable explanation that meets the threshold recommended in 10 ORPS Opinions of Counsel SBRPS 60 (" Instead, whenever an assessor changes the assessments of individual properties or of a particular type of property in a year when the entire roll is not revalued or updated, the assessor must be prepared to explain and justify the changes...the assessor should be prepared to offer proof of his assessment methodology in general so as to successfully withstand any challenge ")].

3. Verified Answer dated April 15, 2005 [" Verified Answer "], First Affirmative Defense. Sur-Reply Affidavit of Brian Kenney sworn to May 18, 2005 at paras. 2, 8 and 11 [" Kenney Sur-Reply Aff. "]; Hearing Transcript dated July 18, 2005, page 52, lines 14-20 [" Trans. "](" the Assessor... explain numerically, justify numerically, his position that first it was eighty, then it was twenty, and if he says that he's putting in improvements, I want to see the numbers on all of this ").

4. Verified Petition dated October 24, 2004 [" Petition "] Affidavits in Support of Verified Petition of Fred Lowell sworn to October 26, 2004, Robert Timberger sworn to October 28, 2004, Audrey Moran sworn to October 28, 2004, Joan Day sworn to October 28, 2004, Stewart Kaiser sworn to October 25, 2004 [" the Kaiser Aff "], Richard Esposito sworn to October 28, 2004, Horace Gibbs sworn to October 28, 2004, Ralph Berk sworn to October 28, 2004, Marcia Siegel sworn to October 28, 2004, Alfred Markim sworn to October 26, 2004 and Ann Costello Bergerman sworn to October 28, 2004. See also the charts described in N. 5, infra.

5. Several competing charts have been submitted by the parties listing the subject properties and their respective owners, 1997, 1998 and 1999 assessments, costs of improvements, ratios and so

forth.

Petitioners' **Charts** include:

Chart 1 [Petition at para. 9];
Chart 2 [Schedule B to Petition];
Chart 3 [Reply Affirmation of Joseph F. Albert dated May 4, 2005 [" Albert Reply Aff. "] at para. 9];
Chart 4 [attachment to a letter of Joseph F. Albert dated July 28, 2005 [" Albert Letter "];
Chart 5 [Affirmation of Joseph F. Albert dated September 6, 2005 [" Albert Aff. II "] at Ex. D.

Respondent's **Charts** include:

Chart 6: [Affidavit of Richard I. Goldsand sworn to December 29, 2004 [" Goldsand Aff. I "], at Ex. A];
Chart 7 [Affidavit of Brian Kenney sworn to August 15, 2005 [" Kenney Aff. II "] at Ex. A.

6. Notice of Petition dated October 29, 2004.

7. Verified Petition dated October 24, 2004 at para. 1 [" the Petition "].

8. The factual basis for this assertion consists of (1) the claim that the Assessor did not indicate on each Petitioners' property card the basis for the 1999 assessment increase (2) statements in the Kaiser Aff [" When I asked the Assessor why he had increased my 1999 assessment, he told me the reason was that the assessment of the new homes in Piermont Landing...were being increased due to higher market values "] and (3), within the " Photo-Notes " Section of Berks' property card in Exhibit A to the Petition is a hand written statement " as of 3/1/99 new AV reflects mkt per BK file ".

9. Petition at para. 127.

10. Matter of Charles Krugman v. Board of Assessors of the Village of Atlantic Beach, 141 A.D. 2d 175, 180, 533 N.Y.S. 2d 495 (2nd Dept 1988).

11. Kenney Sur-Reply Aff. at paras. 8 (" the calculations are based on a sample formula: for instance in the case of 301 Cottonwood Court, the original 1997 assessment was $286,700.00 removing the land portion of $30,000.00 leaves $256,700.00. By dividing .80 into the improvement assessment, the result is a

100% improvement completion of ($351,900.00). This does not include the fact that some of the properties were further improved with finished basements and other improvement ") and 11 (" increases were made due to incompletion, as well as fixing additional assessments upon the properties due to additional improvements ").

12. See Notices of Change of Assessment [" 80% completed "] at Ex. B to Affidavit of Richard I. Goldsand sworn to December 29, 2004 [" Goldsand Aff. I "].

13. Trans. at pp. 8-10.

14. See **Chart** 6. But see Albert Letter at p. 1 (" One exception, as noted at the Hearing: there is no documentary evidence that the Assessor intended in 1997 to assess 211 Erie Court at 80% "); Albert Aff. II at para. 9 (" Assessor has never produced a 1997 Notice of Change of Assessment for Mr. Kaiser's unit with the 80% partial language. The Kaiser property card also fails to note the 80% language anywhere...Mr. Kaiser has no recollection that his 1997 assessment was ever considered partial by the Assessor "); Affidavit of Stewart Kaiser sworn to August 29, 2005 at para. 7 [" Kaiser Aff. II "](" the notion that my original 1997 assessment was not a final, 100% assessment was never mentioned by the Assessor or anyone else. I also have never seen any document which indicated that my 1997 assessment was in any sense partial ").

15. Petition at para. 65 (" In 1997 the Assessor fixed a tentative assessment of $314,900 on Mr. Kaiser's property. ") and para. 67 (" By stipulation entered into by Mr. Kaiser and the Assessor, and signed by Judicial Hearing Officer Luke M. Charde dated September 1997, Mr. Kaiser's 1997 final assessment was reduced to $286,918 ").

16. Trans. at pp. 25-26 (" The Court: Let's talk about the math here. If, in fact, the Assessor is correct, how come it doesn't work out? Let's do the math on this thing. Mr. Goldsand: On which one. The Court: On all of them...The Court: Show me how you say that it's eighty percent. Therefore, 1999's assessment would be twenty percent, in every case, and if it isn't, why isn't it? Mr. Goldsand: Because of some additional improvement. That's what was done ") and 39 (" Mr. Goldsand: " My Assessor says that the partial assessments were because the structures were partially built. The finished basement was done after the partial assessment and had an additional value in addition to the twenty percent ").

17. See **Chart** 3. Trans. at pp. 26-29 (The Court:...The range is anywhere from...25.01(%) to a high of, it looks like, 46.99(%). So that's their math. Now, if (Petitioners) are right, your eighty percent, twenty percent, it doesn't make a lot of sense. What is your answer to this Mr. Goldsand? Mr. Goldsand: My answer is that there were additional improvements on those that were higher than twenty percent. The Court: Where is your chart that explains what you did?...The Court:...but you have no explanation for the rest of these...The Court:...I want Mr. Kenney to go through each of these (properties) and I want a chart like (Petitioners' Chart 3)...The Court: Now I am hearing that you also added improvements to the twenty percent. That wasn't set forth in these papers, and, in fact, if that's the case, how do you value the improvement? ").

18. See N. 11, supra. Trans. at pp. 27-28 (" The Court:...Where is your chart? The only thing you have here (in Kenny Sur-Reply Aff. at para. 9)...the calculations are based on a sample formula...Mr. Goldsand:...we gave an example of what he did and he did the same thing with respect to all of them ").

19. Trans. at pp. 35 (" Mr. Albert:...There is no accounting for the fact that there was a finished basement...Mr. Albert:...It's probably almost exactly on the nose to what he said he was going to do in that notice. The Court: Okay, so he didn't use improvements in this case? "), 37 (" Mr. Albert: What's important to note is that in 1999 there was a twenty-five percent increase that had nothing to do with the improvement to this place after the 1997 assessment was affixed. That means in this case, any way, the Assessor ignored it. Mr. Goldsand: That's not true. Mr. Albert: If, in fact, then a part of the twenty-five percent increase included the finished basement, then the Assessor didn't abide by his twenty per cent rule that he had set for himself because he actually increased the nonbasement portion by less than twenty-five per cent of that. You can't have it both ways. ").

20. Trans. at pp. 41-42 (" The Court:...We don't have a complete picture from the Assessor. We have a nice little theory, but the numbers just don't work out "). See also Albert Aff. II (" The crux of the Assessor's obligation was to support his claim that the widely varying increases in assessments can be explained by the different types of improvements installed by the unit owners in addition to the basic townhouses originally built ").

21. Trans. at p. 52.

22. See Albert Letter, Kenny Aff. II, Albert Aff. II, Affidavit In Reply of Brian Kenney sworn to September 20, 2005 [“ Kenney Aff. III “].

23. See **Charts** 4 and 7, supra.

24. See **Chart** 5, supra.

25. Kenney Aff. II at paras. 4-8; Kenney Aff. III at para. 2 and Ex. A.

26. Albert Aff. II at p. 6 (“ ” if in fact the assessor used the newly described methodology in 1997 and 1999, why didn’t he simply say so in his two prior affidavits or at the July 18, 2006 Hearing. That he did not strongly suggests that he did not actually use this methodology. The below analysis of the facts indeed shows that the figures the Assessor now claims were derived in the 1997-1999 period could not have been correct at that time “).

27. Kenney Aff. II at para. 8.

28. Kenney Aff. III at para. 3.

29. Kenney Aff. III at paras. 6-7.

30. The homeowner’s estimate of the cost of the improvements appears on the Residential Property Cards in Ex. A to the Petition.

31. Albert Letter at p. 2 (referring to **Chart** 4, “ Cost of Improvements After 1997: Each figure shown was stated in a sworn statement by the owner of each townhouse in his or her affidavit, submitted with the Article 78 Petition, as the total cost of work carried out after moving in to each home and before the March 1, 1999 taxable status date in effect for assessment year 1999. At the July 18th Hearing, the Assessor stated in open court that he took into consideration such improvements added to each unit-if any-in fixing the 1999 assessments “); Albert Aff. II at para. 13.

32. Kenney Aff. II at para. 9; Trans. at p. 44; Compare to Albert Aff. II at para. 13.

33. Albert Aff. II at para. 13.

34. Kenney Aff. III at para. 2.

35. Albert Letter at page 3; Albert Aff. II at para. 12.

36. Albert Letter; Albert Aff. II.

37. Albert Aff. II at para. 17 and Ex. F. See also: Letter of Joseph F. Albert dated September 21, 2005 [" Albert Letter II "]. Compare Kenney Aff. III at para. 7 (" Certificates of Occupancy are of little importance for assessment purposes ").

38. Albert Aff. II. at paras. 4-11.

39. Albert Aff. II at para. 14 (" It has been made clear that the Assessor simply has no coherent explanation for the 1999 increases in assessments. He has left out any and all specific numbers. He newly disclosed theory makes no sense. ").

40. Albert Aff. II at para. 14 (fn. 3 " The percentage increase to 308 Cottonwood in 1999 was 18.38%. The increases to the townhouses at 305, 306, 307, 309, 310 and 311 Cottonwood were 34.97%, 40.14%, 25.01, 28.16%, 37.94% and 46.99%, respectively ").

41. See also 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 ").

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

43. 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 ")].

44. See N. 4, supra.

45. Kenney Aff. III. at paras. 6-7 (" in the end it is the market value that is the overriding factor when completing an assessment...The only goal for the 1999 assessments is to have them reflect, the market value for the that year, period...With regard to the overall methodology used by your deponent the market value is the determining factor in calculating a property's proper assessment level multiplied by the Town's equalization ratio ").

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

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

48. Kenney Aff. III. at para. 3 (" Once again the original 80% numbers were estimates and additional improvements were then added on a cost basis ").