

**FILED
AND ENTERED
ON
FEBRUARY 14, 2006
WESTCHESTER
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

TIMOTHY BOCK,

Petitioner,

-against-

Index Nos:
11073/03
07406/04
16873/04

TOWN/VILLAGE OF SCARSDALE, A Municipal
Corporation, its Assessor or Board of
Assessors and Board of Assessment Review,

DECISION & ORDER

Respondents.

For a Review under Article 7 of the Real
Property Tax Law of the State of New York
of the 2002, 2003 & 2004 Assessments of
certain real property situated in the
respondent Municipal Corporation, located
in the County of Westchester, State of New
York.

-----X

DICKERSON, J.

CHURCH LANE: SELECTIVE REASSESSMENT NO: 6

In this most recent examination of the concept of " selective
reassessment "¹ this Court is called upon to decide if the Respondent
Assessor's explanation [i.e., an annual review process² for changing

assessments on real property in the Town/Village of Scarsdale based upon the cost of improvements] of how and why she changed the assessed value on the subject property in 2002 from \$30,700 to \$65,400, is true and, further, was her 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 was it a form of the prohibited policy of selective reassessment [see e.g., Stern v. Assessor of the City of Rye, 268 A.D. 2d 482, 702 N.Y.S. 2d 100 (2d Dept. 2000); DeLeonardis v. Assessor of the City of Mount Vernon, 226 A.D. 2d 530, 641 N.Y.S. 2d 83 (2d Dept. 1996); Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115(A) (Rockland Sup. 2005)].

Stated, simply, and after a careful review of the papers submitted in support of and in opposition to the Petitioner's motion for summary judgment and the excellent presentations of counsel at oral argument held on February 9, 2006, this Court finds that the Respondents have provided a facially reasonable explanation which appears to be fair and comprehensive, " applied even-handedly to all similarly situated property " ³, for the 2002 change in assessment on the subject property which 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 ")

and as discussed in Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115(A) (Rockland Sup. 2005)(" [T]he Assessor has failed to explain... his methodology...failed to provide a ' coherent (numerically based) explanation of his...assessments of the subject properties "; selective reassessment found); Joan Dale Young v. Assessor of the Town of Bedford, 9 Misc. 3d 1107(A) (West. Sup. 2005)(" The Assessor used standard tables and an Appraisal Manual relied upon by Assessors in the Town of Bedford since 1974...it is clear that the Respondents do have ' comprehensive ' plans for assessing vacant land and newly built homes and have applied R.A.R.'s and derived assessments of similar properties in a uniform, fair and non-discriminatory manner "; no selective reassessment found);; MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 8 Misc. 3d 1013(A)(Rockland Sup. 2005)(" The Respondents have provided an explanation for the increase in assessment...(which) is facially reasonable ").

The Motion For Summary Judgment

The Petitioner is the owner of real property located at 57 Church Lane, Scarsdale, New York which is designated as Section 4, Block 3 and Lot 356 on the Official Tax Map of the Town/Village of Scarsdale [" the subject property "]. The Petitioner has filed three Real Property Tax Law [" R.P.T.L. "] Article 7 Petitions⁴, the essence of which " is that the 2002, 2003 and 2004 assessments of the Property resulted from an excessive

assessment increase of \$34,700 in 2002 following improvements having been made to the Property by Petitioner's seller, RGF Development Corp. ("RGF") and RGF's subsequent sale of the Property to Petitioner in February of 2002 at a price of \$2,995,000. This excessive increase was a violation of Petitioner's equal protection rights under the New York State and United States Constitutions "⁵. The Petitioner's motion for summary judgment seeks a declaration that the 2002, 2003 and 2004 assessments are " invalid, void and unconstitutional ", demands a reduction in the subject property's assessment from its present \$65,400 to \$49,400⁶ and variously describes the 2002 assessment as " 113% over the prior assessed value of \$30,700 ", generating an " equalized value of the subject property in 2002 of \$2,794,870 (which is) only 6.7% less than Petitioner's February 2002 purchase price of \$2,995,000 " and which was invalid because " Respondent Assessor had no comprehensive assessment plan in effect to reassess the entire tax roll to reflect the comparative market value of all appreciated properties in the Village " and " engaged in the illegal and discriminatory practice of spot reassessing by singling out Petitioner's Property "⁷.

Petitioner's Valuation Of The Improvements

In 2001 the developer RGF purchased the subject property for \$1,400,000 and proceeded to gut and renovate the property⁸ and resell it to the Petitioner in 2002 for \$2,995,000⁹. The Petitioner has submitted two affidavits attesting to RGF's costs in improving the property, one from

Edward Heller¹⁰, an accountant for RGF, in the amount of \$733,179.21, and the other from Shlomo Freidfertig¹¹, the President of RGF, in the amount of \$744,120.00. Both affidavits rely upon a " summary schedule of costs " but contain no invoices, bills, contracts, receipts, checks or any other credible evidence of the actual costs of the improvements to the subject property¹².

Incredible, Indeed!

Evidently, three years earlier in 2002 after RGF completed its improvements to the subject property Mr. Freidfertig submitted an affidavit of final cost to the Town/Village of Scarsdale stating the " actual cost of the improvement " was \$210,000.00, considerably less than the \$744,120.00 in his more recent 2005 affidavit¹³. The Respondents assert that " Based upon the foregoing affidavits, Mr. Freidfertig has committed perjury by submitting two (2) sworn affidavits indicating different costs for the same project. Such affidavits are not reliable or trustworthy and lack credibility. Such affidavits also reveal that Mr. Freidfertig has defrauded the Village of Scarsdale of \$27,285.00 in revenue for building permit fees for this project...Petitioner has failed to meet (his) burden by failing to offer credible evidence to indicate what the actual cost of the improvements to the subject property were ".

The Assessor's Plan

The Assessor has a plan by which she reassesses property in the Town/Village of Scarsdale based upon improvements¹⁴. The plan is described as the " Town/Village of Scarsdale's review and reassessment process and procedures " [" the Plan "] and according to the Assessor the Plan consists of the following¹⁵:

All Building Permits Investigated

" 2....the review process for change in assessment commences when the Assessor's Office receives notification from the Town/Village's Building Department that a building permit has been issued during an established twelve (12) month period prior to the taxable status day for any given year. As the Assessor I conduct a preliminary investigation of all building permits issued during the noted period, which involves determining and understanding the nature and scope of the work to be done in accordance with the issued permit. This investigation includes, but is not limited to, reviewing the building permit applications, building plans, blue prints and specifications filed with the building department for the approved work ".

Some Changes Not Assessable

" 3. Thereafter, as part of this initial investigation, I eliminate those properties and building permits that do not warrant a change in assessment for reasons such as work under a building permit had not commenced, work under a building permit was modified, canceled, delayed or not yet assessable, or it entailed work that in and of itself constitutes individual items that are generally not assessed (i.e, fences, walls, roofs, windows, siding) ".

Further Review And Investigation

" 4. Those permits where the approved work may result in a change in assessment are then subject to further review and investigation. This review process and investigation includes, but is not limited to, a review of cost estimates submitted, a review of cost manuals and other documents evidencing cost, a review of rent rolls and income and expenses statements, as well as sale and property record card data. In addition, when permitted and where applicable, a site/building inspection is performed and photographs of the subject property taken ".

Tax Year 2001 As An Example

" 5. During the period March 16, 2000 through March 15, 2001, four hundred and eighteen (418) building permits were issued by the Scarsdale Building Department and were the subject of my review. Of the 418 building permits issued and reviewed the assessments of two hundred twenty-seven (227) parcels were changed as a direct result of the improvements made to the property, including the subject property. For the various reasons described above...no assessment change was warranted for the remaining one hundred ninety-one (191) parcels..."

An Even-Handed Policy

" 7. The foregoing demonstrates that the Town/Village of Scarsdale had an even-handed policy and review process that is applied to all properties that are issued building permits and where improvements are made to those properties and a change in assessment is warranted ".

Reassessing The Subject Property

The Assessor described the process by which the subject property was reassessed¹⁶. " [T]he increase in assessed value of the subject property to \$65,400 in 2002 was based upon building permits against the property and the fair market cost of the new construction...More specifically, the

assessed value of the subject property was increased from \$28,000, the assessed value of the property since 1969 to \$30,700 in 2001. This increase was directly attributable to the issuance of building permit #17056 issued on December 29, 2000, which commenced the addition and gut renovation of the subject property and reflected the partial extent of construction on June 1, 2001 taxable status date. Nonetheless this increase in assessed value was not challenged by the owner of record (RGF) on June 1, 2001. After the completion of the addition/gut renovation, the assessed value of the subject property was further increased from \$30,700 to \$65,400 to reflect its completed status on the next succeeding taxable status date, which was June 1, 2002. The property was purchased by the Petitioner in February 2002. This increase was solely attributable to the remainder cost value of the improvements under the aforementioned building permit ".

Respondents' Valuation Of The Improvements

The Respondents' methods of establishing the fair market cost of the improvements to the subject property are described by the Assessor¹⁷ [" More specifically, based upon my training, experience and knowledge of the Scarsdale market, I estimated that the cost of the improvement on the subject property at approximately \$1,580,000 or some \$300 per square foot overall "] and Anthony R. Spencer¹⁸, a " Registered Architect, licensed in New York State " [" Based upon my training and thirty (30) years of professional experience as a registered architect, builder and cost

estimator, I estimated the cost of renovation/addition to the subject premises to be \$1,336,900.00...My estimates are predicated upon fair market cost for construction and not a detailed aggregated cost estimate from a cost manual...my estimate represents ' hard cost ' only and does not include ' soft cost ' such as builder's overhead and profit, which I estimate at twenty-five percent (25%). By including the (25%) soft cost, the total estimated cost for the renovation/addition is estimated at \$1,671,125.00 which exceeds the Town/Village Assessor's estimated cost of the renovation/addition "]¹⁹.

The Assessor Denies Selectively Reassessing The Subject Property

The Respondent Assessor denies treating the subject property unfairly or any differently from other improved properties [the " Petitioner's claim that I increased the assessed value of the subject property solely based upon the purchase price and in violation of the law is patently without merit...I did not use the cost of improvement to increase the assessment to the sale price of the property while leaving the assessment of other improved properties unchanged "²⁰].

Challenging The Assessor's Credibility

The Petitioner challenges the credibility of the Assessor's Plan and her explanation of how the 2002 assessment of the subject property was derived²¹.

First, the Petitioner suggests that the Assessor has failed to accurately complete the property card²² of the subject property [" Nowhere on the Assessor's property card is there any documentation or explanation of the basis for the \$34,700 increase in the assessed value of Petitioner's property "]. Notwithstanding that (1) the property card does, indeed, contain sufficient information concerning building permits issued, improvements made and changes in assessments to the subject property and (2) the Petitioner misconstrues the requirements of " RPTL §§ 1580 et seq. " and " Title 9 of New York Codes, Rules and Regulations...Part 192, subdivision 2-2...at (b)(1) and subdivision 4.2...at (a)(2) " as they relate to real property cards and (3) improperly refers the Court to case law, the significance of which is distorted by the addition of language which does not appear therein²³, the issues, if any, raised regarding the credibility of the Assessor's Plan and her explanations are matters to be resolved at trial.

Second, the Petitioner challenges " the cost estimate of Mr. Spencer " as " merely speculati[ve] "²⁴. At this point six (6) different estimates of the costs of the improvements to the subject property have been presented to this Court [Heller (\$733,179.21), Freidfertig

(\$744,120.00 and \$210,000.00), Spencer (\$1,336,900.00 hard costs and \$1,671,125.00 plus soft costs), Assessor (\$1,580,000.00). Clearly, a trial is needed to determine the market value of the costs of the improvements to the subject property.

Third, the Petitioner claims that the " minuscule difference " between an " equalized value of \$2,972,275, utilizing the 2002 equalization rate of 2.2% for Scarsdale " [based upon an assessed value of \$65,400] and the sale price of \$2,995,000 " seems too close to be a coincidence and is rather clear evidence that the Assessor's increase was largely influenced by Petitioner's purchase price "²⁵. This observation, if at all relevant, goes to the Assessor's credibility and is best explored at trial.

Fourth, the Petitioner, Timothy Bock, claims that " Ms. Albanese informed me that she considered the price my wife and I were paying RGF to be a significant factor in making her determination of the new assessment to be placed on the Property as a result of the improvements that had been made by RGF "²⁶. The Assessor denies having any such conversation [" I deny having any conversation with Petitioner and/or his spouse regarding the inclusion of the purchase price with the cost of improvements as a basis for determining the new assessed value "²⁷]. Once again a trial will be necessary to resolve these contradictory statements.

DISCUSSION

A Reasonable, Fair & Non-Discriminatory Review Process

The Assessor developed and implemented a reasonable and comprehensive plan for the non-discriminatory reassessment of real property based upon the market cost of improvements determined by referring to all filed building permits and conducting an extensive investigation featuring a review of building permit applications, building plans, blue prints, specifications filed with the building department, cost estimates submitted, cost manuals and other documents evidencing cost, rent rolls and income and expense statements, sale and property record card data and, where applicable, a site/building inspection was performed and photographs taken. Once identified the Assessor would estimate the cost of the improvement based on her training, experience and knowledge of the " Scarsdale market ". The plan was applied to all building permits filed [though some changes were not assessable, e.g., fences, walls, roofs, windows, siding] and during 2001, for example, of the 418 building permits issued by the Scarsdale Building Department the assessments on 227 parcels, including the subject parcel, were changed based on the cost of improvements made while no assessment change was made to the remaining 191 parcels, the changes thereon not being assessable. The subject property was treated like all others for which building permits were filed and the cost of the improvements, notwithstanding the lower estimates submitted by

Petitioner and the higher estimate submitted by Mr. Spencer, was arrived at in a reasonable and non-discriminatory manner as well.

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 County²⁸ (" 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 Pleasant²⁹ (" 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 Assessors³⁰ (" 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 Southampton³¹ (" 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 "³² and " improper assessment "³³.

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 Beach³⁴ (" 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 Rye³⁵ (" 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 Bedford³⁶ (" 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 Vernon³⁷ (" 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 Bedford³⁸ (" 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 Canandaigua³⁹ (" the petition sets forth specific examples of gross disparities in the assessed value of allegedly comparable

property "); Matter of Reszin Adams v. Welch⁴⁰ (" respondent's ` selective reassessment ` was not rationally based and therefore was improper "); Matter of Averbach v. Board of Assessors⁴¹ (allegations that " assessments were made pursuant to an illegal ` welcome stranger ` assessment procedure "); Gray v. Huonker⁴² (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 Orangetown⁴³ (selective reassessment found).

High Coefficients Of Dispersion

Second, a high coefficient of dispersion⁴⁴ may be a sign of selective reassessment⁴⁵ [See e.g., Waccabuc Construction Corp. v. Assessor of Town of Lewisboro⁴⁶(" 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 Assessors⁴⁷].

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 Islip⁴⁸ (" 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 Rye⁴⁹ (" 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 Vernon⁵⁰ (no selective reassessment found); Teja v. The Assessor of the Town of Greenburgh⁵¹ (" 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 Vernon⁵² (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 Bedford⁵³ (" 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 trial⁵⁴.

The Burden Of Proof

The evidence presented by the Respondents [and, conversely, the Petitioner's lack of credible evidence and his failure to carry his " heavy (evidentiary) burden " in challenging the 2002, 2003 and 2004 assessments of the subject property [Krugman v. Board of Assessors of the Village of Atlantic Beach, 141 A.D. 2d 175, 182, 533 N.Y.S. 2d 495 (2d Dept. 1988); Nash v. Assessor of the Town of Southampton, 168 A.D. 2d 102, 108, 571

N.Y.S. 2d 951 (2d Dept. 1991)(" it cannot be said, on the present record, that the Town acted in bad faith...or that the plaintiffs were ' singled out for selective enforcement of tax laws that apply equally to all similarly situated taxpayers ' "); Waccabuc Construction Corp. v. Assessor of the Town of Lewisboro, 166 A.D. 2d 523, 525, 560 N.Y.S. 2d 805 (2d Dept. 1990)(failure to meet " heavy burden " of demonstrating that Lewisboro's 1983 assessment roll was improper or illegal ")] demonstrates that the Respondents' actions in using a combination of relevant factors, " applied evenhandedly to all similarly situated property within (the Town/Village of Scarsdale) " ⁵⁵, to reassess real property based upon the market cost of improvements thereto, for which building permits were issued, including the reassessment of the subject property in 2002, were fair, reasonable and non-discriminatory.

Of No Legal Significance

The Petitioner claims that the " minuscule difference " between an " equalized value of \$2,972,275, utilizing the 2002 equalization rate of 2.2% for Scarsdale " [based upon an assessed value of \$65,400] and the sale price of \$2,995,000 " seems too close to be a coincidence and is rather clear evidence that the Assessor's increase was largely influenced by Petitioner's purchase price "⁵⁶. In so stating the Petitioner relies upon language in Stern v. Assessor of the City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 (2d Dept. 2000)(" Most compelling is the fact that the

1996 assessed value of the Stern property was just over the 1995 purchase price plus improvements ") as somehow creating a litmus test for proof of selective reassessment. Such reliance is not well founded. The Stern Court was faced with an Assessor who failed to explain his assessment methodology, unlike the Assessor herein, and proffer any " admissible evidence that the reassessments were lawful pursuant to a comprehensive assessment plan ". In fact, the Stern case and others like it demonstrate that when an Assessor fails to provide a reasonable explanation for the reassessment of real property the Courts will not hesitate in finding selective reassessment [see e.g., DeLeonardis v. Assessor of the City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 (2d Dept. 1996)(" The Assessor did not submit an affidavit disputing the claim that he relied on the purchase price in arriving at the assessed value"; selective reassessment found); Carter v. City of Mount Vernon, No. 19301/02, Rosato, J., November 26, 2003 (" the respondents do not so much as even identify or enumerate just what specific renovations or improvements they are referring to "; selective reassessment found); Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)(West. Sup. 2005)(the " Assessor has explained that the reassessment of the subject property...was based upon a multiple listing..."); new inspection and assessment ordered; no selective reassessment found); Dale Joan Young v. The Town of Bedford, 9 Misc. 3d 1107(A) (West. Sup. 2005)(Assessor's assessment plan and explanations found to be " fair, reasonable and non-discriminatory "; no selective reassessment found); Markim v. Assessor of the Town of Orangetown, 9

Misc. 3d 1115(A) (Rockland Sup. 2005)(" Assessor's reassessment plan and explanations found to be " incoherent and inexplicable methodology which was plainly unfair, unreasonable and discriminatory "; selective reassessment found)].

Conclusion

While the Petitioner has failed to carry his " heavy (evidentiary) burden " in challenging the subject assessments, proving the existence of the policy of selective reassessment and in demonstrating the fair market cost of the improvements to the subject property, he may be able to do so after the " development of a record at trial "⁵⁷.

Based upon the foregoing the Petitioner's motion is denied in all respects.

This constitutes the Decision and Order of this Court

Dated: February 14, 2006
White Plains, N.Y.

HON. THOMAS A. DICKERSON
SUPREME COURT JUSTICE

TO: Joel B. Lieberman, Esq.
Attorney for Petitioner
66 Richbell Road
White Plains, N.Y. 10605

Wayne D. Esannason, Esq.
Attorney for Respondents
Town/Village of Scarsdale
1001 Post Road
Scarsdale, N.Y. 10583

ENDNOTES

1. This Court has previously examined the policy of selective reassessment in Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115(A) and 6 Misc. 3d 1042(A)(Rockland 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)(Rockland Sup. 2005) and Dale Joan Young v. The Town of Bedford, 9 Misc. 3d 1107(A) (West. Sup. 2005). See also Siegel, Reassessment on Sale, New York Law Journal, August 2, 2005, p. 16 and Dickerson, Real Property Selective Reassessment: Annual Method Best?, New York Law Journal, January 5, 2006, p. 7.

2. Affidavit of Nanette J. Albanese sworn December 29, 2005 [" Albanese Aff. II "]; See also Affidavit of Nanette J. Albanese sworn to September 26, 2005 [" Albanese Aff. I "].

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

4. Affirmation of Joel B. Lieberman dated August 31, 2005 [" Lieberman Aff. I "].

5. Lieberman Aff. I at para. 5.

6. Petitioner's Notice of Motion for Summary Judgment dated August 31, 2005 [" Notice of Motion "].

7. Lieberman Aff. I at paras. 11-16.

8. Albanese Aff I. at paras. 3-4 [" addition and gut renovation "]; Affidavit of Anthony R. Spencer sworn to September 22, 2005 [" Spencer Aff. "] at para. 3 [" renovation/addition "].

9. See Property Card at Ex. 10 of the Affirmation of Joel B. Lieberman dated February 1, 2006 [" Lieberman Aff. III "].

10. Affidavit of Edward Heller sworn to August 9, 2005 [" Heller Aff. "].

11. Affidavit of Shlomo Freidfertig sworn to November 29, 2005 [" Freidfertig Aff. I "].

12. See Affirmation of Wayne D. Esannason dated September 21, 2005 [" Esannason Aff. I "] at paras. 10-11; Affirmation of Wayne D.

Esannason dated December 29, 2005 [" Esannason Aff. II "] at para. 5.

13.Ex. B to Esannason Aff. II.

14. See Albanese Aff. I at para. 2 (" Over the past six (6) years, in my capacity as Town/Village Assessor for the Village of Scarsdale I have reviewed approximately 12,000 properties for assessed value changes; have made approximately 2,400 annual value changes and have handled approximately 350 SCARP petitions over the six (6) year period ").

15. Albanese Aff. II at paras. 2-7.

16. Albanese Aff. I at paras. 3-4.

17. Albanese Aff. I at para. 4.

18. Spencer Aff. at para. 3.

19. For the significance of the difference between the two estimates of value see Esannason Aff. I at para. 7 (" Despite a difference in judgment in the estimated cost/value of the improvements between the Town/Village Assessor and (Spencer) using the \$1,582,537.00 against the (RAR) 2.34% generated an equalized value of approximately \$2,800,000.00 which is approximately \$200,000 less than the Petitioner's purchase price of \$2,995,000.00. Thus, also supporting the contention that the increase in assessed value does not equate with the purchase price ").

20. Albanese Aff. I at para. 6.

21. Affirmation of Joel B. Lieberman dated February 1, 2006 [" Lieberman Aff. III "].

22. Lieberman Aff. III at paras. 3-5.

23. In Lieberman Aff. III at para. 5 the case of Carter v. City of Mount Vernon, No. 19301/02, Rosato, J., November 26, 2003 is cited and the following quote attributed thereto, " not so much as even identify, or enumerate [on the property card] just what specific renovations or improvements [she was] referring to ". A review of the Carter case reveals that there is no basis for the parenthetical language " on the property card " which means that the Carter case does not in anyway serve as support for the proposition that a failure to complete the property card in the

manner proposed by Petitioner is some indicia of selective reassessment.

24. Lieberman Aff. III at para. 7.

25. Lieberman Aff. III at para. 11.

26. Affidavit of Timothy Bock sworn to August 18, 2005 [" Bok Aff. "].

27. Albanese Aff. I at para. 7.

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

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

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

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

32. 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 ").

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

34. 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).

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

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

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

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

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

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

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

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

43. Matter of Markim v. The Town of Orangetown, 6 Misc. 3d 1042(A) (West. Sup. 2005) and 9 Misc. 3d 1115(A) (West. Sup. 2005).

44. 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 ").

45. A high COD may also be explained by changing market conditions and the decision not to participate in an annual assessment program. See e.g., Wilkes, A Legal Analysis of Assessment Practices and Property Tax Equity in the Village of Bronxville, September 12, 2005 (" An assessor in a community that does not regularly revalue might with all good intention seek to moderate the amount of assessment increases in an effort to minimize overall dispersion in the assessment roll. Indeed, with a coefficient of dispersion (COD) of just under 20%... Bronxville's assessment roll is not egregiously random (as some Westchester rolls are) ") and Eckert, Assessment Practices and Effective Tax Rate Variations in Bronxville, September 8, 2005 (" While the 19.6% COD may be legally acceptable under New York

State case law, our opinion is that the variations in effective tax rates inherent in the Bronxville assessment represent a significant departure from both good assessment practices... "), both available at www.villageofbronxville.com, Village Assessor tab.

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

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

48. 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).

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

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

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

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

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

54. Such cases have involved a delay in the implementation of a comprehensive reassessment program [See e.g., Nash v. Assessor of Town of Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 (2d Dept. 1991)(" Whether the delay in the implementation of a comprehensive reassessment of all of the parcels in a taxing jurisdiction can result in equal protection violation...it cannot be said, on the present record, that the Town acted in bad faith...")], the reassessment of 150 waterfront parcels because of " the rapid rate of appreciation of property " [See e.g., Mundinger v. Assessor of the City of Rye, 187 A.D. 2d 594, 590 N.Y.S. 2d 122 (2d Dept. 1992)(" The reassessment program... would be justified...if waterfront residential property appreciated at a higher rate than nonwaterfront residential property ")], the use of two different methods of assessing Class I property [See e.g., Matter of Fred Chasalow v. Board of Assessors, 176 A.D. 2d 800, 803, 575 N.Y.S. 2d 129 (2d Dept.

1991)(" Indeed, it is well settled that a system of assessment which is challenged on the ground of inequality may nevertheless survive judicial scrutiny if the assessing authority demonstrates that the classification which results in unequal treatment bears a rational relation to the achievement of a legitimate governmental objective ")], the reclassification of Class II property to Class I property [See e.g., Matter of Acorn Ponds v. Board of Assessors, 197 A.D. 2d 620, 621, 603 N.Y.S. 2d 491 (2d Dept. 1993)(" There is no proof in the record that the failure to reassess all Class I property when the petitioner's property was reassessed resulted in disparate tax treatment of a constitutional dimension ")] and the method of dividing " the Town into four neighborhoods for valuation purposes " [See e.g., Matter of Akerman v. Assessor of Town of Hardenburg, 211 A.D. 2d 916, 917, 621 N.Y.S. 2d 154 (3d Dept. 1995)(petitioners have not established that the formulas used by respondents were improper or inequitable or that the assessments violate constitutional requirements "); Matter of MGD Holdings v. Town of Haverstraw, 8 Misc. 3d 1013(A) (West. Sup. 2005)(motion for summary judgment denied; fact issues to be resolved at trial].

55. Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, 488 U.S. 336, 345, 109 S. Ct. 633 (1989)

56. Lieberman Aff. III at para. 11.

57. MGD Holdings HAV, LLC v. Assessor of the Town of Haverstraw, 8 Misc. 3d 1013(A) (Rockland Sup. 2005).