SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
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In the Matter of the Application of
MARK and SUSAN DAWN KAMINSKY,

Index Nos: 16809/03
15417/04
17297/05

Petitioners,

-against-

DECISION & ORDER

THE ASSESSOR OF THE TOWN OF OSSINING,
THE BOARD OF REVIEW OF THE TOWN OF
OSSINING and THE TOWN OF OSSINING,

Respondents,

For a Review under Article 7 of the
Real Property Tax Law of the State of
New York.

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DICKERSON, J.

SELECTIVE REASSESSMENT NO. 11: LONG HILL ROAD WEST

In this latest examination of the concept of " selective reassessment "[1] this Court is called upon to decide if the Respondent Assessor's explanation of how and why she changed the assessed value of the subject property in 2000 from $68,500.00 to

$93,825.00 is true, and, further, was her assessment methodology [" sales verification procedures as explained and upheld in McCready v. Ossining[2] "[3]] fair, reasonable and nondiscriminatory [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); AKW Holding LLC v. The Assessor of the Town of Clarkstown, 12 Misc. 3d 1160 (Rockland Sup. 2006); Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115 (Rockland Sup. 2005), mod'd 11 Misc. 2d 1063 (Rockland Sup. 2006); Bock v. Town/Village of Scarsdale, 11 Misc. 3d 1052 (West. Sup. 2006); Young v. The Town of Bedford, 9 Misc. 3d 1107 (West. Sup. 2005); Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004 (West. Sup. 2004); Carter v. The City of Mount Vernon, Index No: 19301/02, J. Rosato, Decision November 25, 2003 (West. Sup. 2003)].

Article 7 Challenge To Assessor's Methodology

The Petitioner may bring either a CPLR Article 78 proceeding

[See Markim v. Assessor of the Town of Orangetown, 6 Misc. 3d 1042 (Rockland Sup. 2005)(" What is the proper remedy available to Petitioners? Must Petitioners proceed by way of R.P.T.L. Article 7 or may they collaterally attack the Assessor's methods by way of a C.P.L.R. Article 78 proceeding? "); AKW Holdings LLC v. The Assessor of the Town of Clarkstown, 12 Misc. 3d 1160 (Rockland Sup. 2006)] or an RPTL Article 7 proceeding [See e.g., Bock v. Town/Village of Scarsdale, 11 Misc. 3d 1052 (West. Sup. 2006); McCready v. The Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006)] challenging the 2003, 2004 and 2005 assessments of the subject property on the grounds that they are " invalid, void and unconstitutional "[4].

Methodology Fair, Reasonable & Non-Discriminatory

Stated, simply, and after a careful review of the excellent papers submitted by the parties this Court finds that the Assessor's methodology[5] for updating and correcting inventory data with respect to the tax parcels for which she is responsible, and which in this case involved comparing an MLS listing containing the language " *New stainless Eik, office, au-pair/br* " [emphasis added] which had been created in connection with the sale of the subject property, with building permits[6], none of which had been

“ applied for or obtained for the subject property since 1959 “[7], requesting an inspection which was not performed due to no fault of the Assessor and reassessing based upon an estimate of the value of the improvements presumed to have been made, is fair, reasonable and non-discriminatory and is “ applied even-handedly to all similarly situated property “[8], and 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 “)][9].

Assessments Vacated And Matter Remitted

However, while the Assessor did not selectively reassess the subject property, the 2002, 2003 and 2004 assessments are vacated, nonetheless, because she failed to verify the existence of and value of the improvements identified in the MLS listing [“ *New stainless Eik, office, au-pair/br* “ [emphasis added]]. The matter is remitted for new assessments which add only the value of the improvements to the subject property made during the period from when the property was assessed [per Court Order] in 1993 at

68,500.00 to just prior to the taxable status dates of each of the tax years, 2003, 2004 and 2005, in dispute.

Factual Background

The Petitioners purchased the subject property located at 884 Long Hill Road West, Briarcliff Manor, New York on October 14, 1999 from Thomas E. Emmenegger and Anne E. Farley for $1,250,000.00[10]. The property card reveals that the subject property was initially owned by Harry E. Mattin in 1958, transferred to Christina Mattin Fischetti on June 1, 1989 and sold to Thomas E. Emmenegger and Anne E. Farley on November 3, 1997 for $750,000.00 [11].

Assessment History

In 1974 the Town of Ossining went through a Town wide revaluation as previously discussed in McCready v. Assessor of Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006) and the subject property was assessed at $93,500.00[12]. The assessment was increased in 1990 to $93,825.00, decreased in 1991 to $79,375.00 and decreased again in 1993 to $68,500.00[13]. According to the Assessor's recollection the 1993 reduction " was on account of the poor condition of the home, i.e., that time had taken its toll on the home and needed repairs had been neglected "[14], a position disputed

by the Petitioners [" Firstly, the ' Town ' did not reduce the assessments, the assessments were reduced by the Board of Assessment Review and the Supreme Court. Secondly, there is no documentary evidence to support this claim of the Assessor...the property card...does not contain any calculation for depreciation "[15]].

The 2000 Change In Assessment

In 2000 the Assessor increased the assessment on the subject property from $68,500.00 to $93,825.00[16] which was reduced in 2003 by the Board of Assessment Review to $90,000.00[17].

The Challenged Assessments

Three years later the Petitioners filed grievances regarding the assessments in 2003, 2004 and 2005 asserting " At the 2003 BAR hearing, the Assessor stated that the assessment was reduced on or about 1991 by the BAR from $93,825.00 to $68,500.00. Without any improvement to the home, the Assessor returned the assessment to the 1991 assessment of $93,825.00 "[18]. The Petitioner also filed RPTL Article 7 Petitions challenging the 2003, 2004 and 2005 assessments asserting " the Assessor illegally reversed a reduction

in assessed value granted years ago without any change in the property "[19].

The Assessor's Methodology

The Assessor's explanation for the increase in the 2000 assessment from $68,500.00 to $93,825.00 begins with her " sales verification procedures " previously examined in McCready, supra[20]. Specifically, she compared the price at which the Petitioners purchased the subject property [$1,250,000.00] " to the assessed value equalized so as to determine whether any discrepancy between the assessment and the sale price was the result of market conditions, in which case no action would be taken, or resulted from an inventory discrepancy (*for example, from un-permitted construction work*)[emphasis added] in which case a review of the assessment was required in order to achieve consistency among similar properties. At the 1999 (RAR) for the Town of Ossining of 9.79%, the then existing $68,500 assessment reflected a total value of $699,694 compared with the selling price of $1,250,000. Even at the 2000 RAR of 8.93%, the assessed value was only about 60% of the selling price "[21].

The MLS Listing

As in McCready[22], supra, an MLS listing[23] prepared in connection with the sale of the subject property caused the Assessor to conduct an investigation. Specifically, the MLS listing described the subject property as having a " ' New stainless Eik, office, au-pair/br ' (' Eik ' stands for eat-in-kitchen) ". However, neither the property card[24] nor " An inquiry to the Building Department of the Village of Briarcliff Manor disclosed that (any) building permits has been applied for or obtained for the subject property since 1959 "[25].

" Un-Permitted " Improvements

Based upon her investigation[26] the Assessor concluded that " it was clear that work had been done without benefit of building permits-work which substantially increased the value of the property and, which, had it been reported, would have provided the basis for an increase in assessed value to reflect the value of the improvements. The addition of an eat-in-kitchen alone should have resulted in the filing of a building permit and an appropriate upward adjustment in assessment. Moreover, it is not clear whether the word ' new ' applies to the ' office, au-pair/br ' as well as

the stainless eat in kitchen. If it does, then very significant additional improvements are involved "[27].

Inspection Sought But Not Performed

On March 24, 2000 a letter[28] was sent requesting an inspection of the subject property. After receiving no response the Assessor " visited the property in May, 2000 to see if the owners would permit me to view the premises. However, I could not approach the door because an electronic gate was installed at the driveway. Once again, I contacted the Building Department of the Village of Briarcliff Manor...I was informed that no application for permit had been filed and, in fact, the Village cited the Petitioners for violating the Village Code, in that they had performed electrical work without an Electrical Permit "[29].

Value Of Improvements Estimated

Unable to inspect the subject premises the Assessor estimated the value of the improvements. " Accordingly, I reasoned that the deferred maintenance which had resulted in the reductions of the building portion of the assessment in 1990, 1991 and 1992 had been corrected by the improvements and renovations which had been

covertly made by the time the property was listed in 1999. This was the basis for assessing the property in the year 2000 at $93,825 “[30]

Assessor’s Rationale Challenged

Minimizing the significance[31] of the description “ New stainless Eik, office, au-pair/br “ in the MLS listing and inexplicably asserting that an “ inspection of the property is not relevant in the issue in this case “[32] the Petitioners challenge the Assessor’s reasoning for her estimate of the value of the presumed improvements. “ [T]he Town Assessor has-without any documentary evidence-assumed what the basis for the earlier assessment reductions were and justifies a complete reversal of the reductions to the exact dollar amount on an assumption...that the property had a new stainless eat in kitchen...The Assessor-concluded that the house needed ‘ improvements ‘- though she does not know what needed to be improved, whether there was even a need for the improvements, and readily admits that she cannot prove that the ‘ need ‘ was the ‘ deferred maintenance ‘ which resulted in the reductions in the first place-and did not indicate on...the property card-the reason for the same “[33].

DISCUSSION

A Reasonable, Fair & Non-Discriminatory Review Process

As this Court previously found in McCready[34], supra, " The Assessor utilized a reasonable, fair and non-discriminatory procedure for updating and correcting inventory data on tax parcels in the Town of Ossining " and which in this case involved comparing an MLS listing containing the language " *New stainless Eik, office, au-pair/br* " [emphasis added] which had been created in connection with the sale of the subject property, with building permits, none of which had been " applied for or obtained for the subject property since 1959 "[35], requesting an inspection which was not performed due to no fault of the Assessor and, reassessing based upon an estimate of the value of the improvements presumed to have been made.

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 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 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 "[36] and " improper assessment "[37]. Selective reassessment does not involve the initial assessment of newly created property[38] which itself may raise equal protection issues[39].

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 [emphasis added]. 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 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)(" 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 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 "); Schwaner v. Town of Canandaigua, 17 A.D. 2d 1068, 1069, 794 N.Y.S. 2d 233 (4th Dept. 2005)(" 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)(" 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)(allegations that " assessments were made pursuant to an illegal ' welcome stranger ' assessment procedure "); Gray v. Huonker, 305 A.D. 2d 1081, 758 N.Y.S. 2d 731 (4th Dept. 2003)(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 Orangetown, 6 Misc. 3d 1042 (West. Sup. 2005), 9 Misc. 3d 1115 (West. Sup. 2005)(" In 1999, the Assessor, instead of adding the remaining 20% of the 1997 determined market value...together with

the value of any improvements, reassessed in 1999 at an ‘ overall market value ‘ using an incoherent and inexplicable methodology “; selective reassessment found) mod’d 11 Misc. 3d 1063(A) (Rockland Sup. 2006); McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006)(“ Notwithstanding the assertion that ‘ The only possible explanation for the excessive 2002 increase is that it constitutes a poorly masked policy of sale chasing ‘ the Petitioners have failed to present credible evidence sufficient to carry their ‘ heavy (evidentiary) burden ‘ in challenging the 2002, 2003 and 2004 assessments of the subject property “; selective reassessment not found)].

High Coefficients Of Dispersion

Second, a high coefficient of dispersion[40] may be a sign of selective reassessment[41] [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 unit 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 [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 Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 (2d Dept. 2000); AKW Holdings LLC v. The Assessor of the Town of Clarkstown, 12 Misc. 3d

1160 (Rockland Sup. 2006)(" It is clear that Respondents did not base their 2003 reassessment upon any improvements to the subject property but relied solely upon a procedure of reassessing some properties [but not within the context of a Town wide revaluation program] to bring them ' in line with the assessed value of other similar properties in the Town of Clarkstown '...The rule in the Second Department is that, in the absence of a Town wide revaluation program, real property[42] may only be reassessed based upon the value of improvements "); McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006)(assessor's screening procedure for updating and correcting inventory data with respect to Town of Ossining's 10,100 tax parcels fair, reasonable and non-discriminatory; assessment vacated because of poor execution of screening procedure and reliance on inaccurate MLS listing and 1974 property card and failure to examine 1965 building plans; new assessment ordered; no selective reassessment found) Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020 (West. Sup. 2005)(the " Assessor has explained that the reassessment of the subject property...was based upon a multiple listing..."); assessment vacated and new inspection ordered because of dispute over value of improvements; no selective reassessment found); Matter of Bock v. Assessor of the Town/Village of Scarsdale, 11 Misc. 3d 1052 (West. Sup. 2006)(assessor presented facially reasonable explanation for changing assessments on real property

based upon the cost of improvements which appears to be fair and comprehensive; no selective reassessment found); Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004; 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, 9 Misc. 3d 1107 (West. Sup. 2005)].

No Equal Protection Violation Or Remand For Trial

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. Such cases have involved a delay in the implementation of a comprehensive reassessment program [See 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 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 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 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 “)], the method of dividing “ the Town into four neighborhoods for valuation purposes “ [See 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 ")] and the methodology of partially assessing real property [See e.g., Matter of MGD Holdings v. Town of Haverstraw, 8 Misc. 3d 1013 (West. Sup. 2005)(motion for summary judgment denied; fact issues to be resolved at trial), reargument granted 11 Misc. 3d 1054(Rockland Sup. 2006); Matter of Markim v. The Town of Orangetown, 11 Misc. 3d 1063 (Rockland Sup. 2006)].

The Burden Of Proof

Notwithstanding the assertion that " the Assessor illegally reversed a reduction in assessed value granted years ago without any change in the property "[43] the Petitioners have failed to present credible evidence sufficient to carry their " 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 ")].

2002, 2003 & 2004 Assessments Vacated

However, while the Assessor did not selectively reassess the subject property, the 2002, 2003 and 2004 assessments are vacated, nonetheless, because she failed to verify the existence of and value of the improvements identified in the MLS listing [" *New stainless Eik, office, au-pair/br* " [emphasis added]] [See e.g., Carter v. The City of Mount Vernon, supra (" (the Assessor) represents that the increase in assessment...was based...upon ' certain improvements ' having been made to the property, *without proper permits* [emphasis added], by the prior owner...the respondents do not so much as even identify, or enumerate just what specific renovations or improvements they are referring to "); AKW Holdings LLC v. The Assessor of the Town of Clarkstown, supra (" While the Petitioner and Respondents have presented no credible evidence of what improvements were made, when they were made and what they cost it is apparent that the interior of the subject property was changed sometime after approval by " the Planning Board of the Town of Clarkstown (of a) a site plan

(and) official plat (submitted by the prior owners of the subject property which) indicates improvements to be made ")].

New Assessments Ordered

The matter is remitted for new assessments which add only the value of the improvements to the subject property made during the period from when the property was assessed [per Court Order] in 1993 at 68,500.00 to just prior to the taxable status dates of each of the tax years, 2003, 2004 and 2005, in dispute [See e.g., Matter of AKW LLC v. The Assessor of the Town of Clarkstown, supra (" matter remitted for a new assessment which adds only the value of the improvements to the subject property made during the period from when the subject property was first assessed at $800,000 to just prior to the taxable status date of May 1, 2003 "); Matter of Villemena v. City of Mount Vernon, 7 Misc. 3d 1029 (West. Sup. 2005)(" the instant matter is remitted back to Respondents for a new assessment for calendar year 2003, which assessment is to be determined by taking the prior (2001) assessment and adding to same only the value of the improvements to the subject property "); Carter v. City of Mount Vernon, supra (" matter is remitted back to the respondents for a new assessment for calendar year 2002 which assessment is to be determined by taking the prior (2001)

assessment and adding to same only the value of improvements, if any, to petitioners' property ")].

Inspection Ordered

The Petitioners shall make the subject property accessible for an inspection by the Assessor.

The foregoing constitutes the Decision and Order of this Court.

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

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HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

TO: Jeffrey Shumedja, Esq.
Attorney for Petitioners
Sleepy Hollow National Bank Building
POB 876
Sleepy Hollow, N.Y. 10591

Thomas R. Berne, Esq.
Cuddy & Feder LLP
Attorneys for Respondents
90 Maple Avenue
White Plains, N.Y. 10601

ENDNOTES

1. This Court has previously examined the policy of selective reassessment in AKW Holdings, LLC v. The Assessor of the Town of Clarkstown, 12 Misc. 3d 1160 (Rockland Sup. 2006)(selective reassessment found); Redhead Properties, L.L.C. v. Town of Wappinger, 2006 WL 1274077 (Dutchess Sup. 2006)(no selective reassessment found); McCready v. Assessor of Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006)(no selective reassessment found); Bock v. The Assessor of the Town/Village of Scarsdale, 11 Misc. 3d 1052 (West. Sup. 2006)(no selective reassessment found); Markim v. Assessor of the Town of Orangetown, 6 Misc. 3d 1042 (Rockland Sup. 2005), 9 Misc. 3d 1115 (Rockland Sup. 2005)(selective reassessment found), mod'd 11 Misc. 3d 1063 (Rockland Sup. 2006); MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 8 Misc. 3d 1013 (Rockland Sup. 2005), reargument granted 11 Misc. 3d 1054 (Rockland Sup. 2006); Dale Joan Young v. The Town of Bedford, 9 Misc. 3d 1107 (West. Sup. 2005)(no selective reassessment found); Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)(West. Sup. 2005)(no selective reassessment found). See also Dickerson, Real Property Selective Reassessment: Annual Method Best?, New York Law Journal, January 5, 2006, p. 7 and Siegel, Reassessment on Sale, New York Law Journal, August 2, 2005, p. 16.

2. McCready v. The Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006).

3. Affidavit of Josette Polzella sworn to May 15, 2006 [" Polzella Aff. "] at para. 4.

4. Affidavit of Jeffrey S. Shumejda sworn to April 21, 2006 [" Shumedja Aff. I "] at para. 1.

5. **See** McCready v. The Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006).

6. Compare to Bock v. Town/Village of Scarsdale, 11 Misc. 3d 1052 (West. Sup. 2006)(" 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* [emphasis added], building plans, blue prints, specifications filed with the building department, cost estimates submitted, cost manuals and

other documents evidencing cost...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 [though some changes were not assessable, e.g, fences, walls, roofs, windows, siding] and during 2001, for example, of the 418 building permits issued...the assessments on 227 parcels...were changed based on the cost of improvements ”; no selective reassessment found)].

7. Polzella Aff. at para. 4.

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

9. **For examples of reasonable methodologies see the programs developed by** the Assessor of the Town of Ossining [See e.g. McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006), the Assessor of the Town/Village of Scarsdale [See e.g., Bock v. Town/Village of Scarsdale, 11 Misc. 3d 1052 (West. Sup. 2006) and the Assessor of the Town of Bedford [See e.g., 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...for the purpose of assessing newly created property on vacant, unimproved land...it is clear that the Respondents do have ‘ comprehensive ‘ plans for assessing vacant land and newly built homes...”; no selective reassessment found).

10. **Shumedja Aff. I at para. 3 & Ex. A.**

11. **Shumedja Aff. I at Ex. A.**

12. Polzella Aff. at paras. 2 (the initial assessment was $93,500 not $93,700) and 3; Shumedja Aff. I at Ex. A.

13. **Shumedja Aff. I at Ex. A.**

14. Polzella Aff. at para. 3 (“ The fact that successive reductions in the building portion of the total assessment had been made reinforces my belief that deferred maintenance of the dwelling was responsible for these reductions. Finally, there is also the fact that the reductions were not common to the neighborhood in which the property is located...it is my recollection that the subject property had issues supporting a reduction which were not common to the neighborhood “).

15. Reply Affidavit of Jeffrey S. Shumedja sworn to May 18, 2006 [" Shumedja Aff. II "] at paras. 2-6 (" the Town Assessor states in her Affidavit that it was only her ' belief ' that the reductions in assessments for the subject property were due to ' deferred maintenance '...The Assessor readily admits that she was not the Town Assessor when the first reduction took place and she cannot locate any documentary evidence to support her ' belief '").

16. Shumedja Aff. I at para. 5 & Ex. B; Polzella Aff. at para. 8.

17. Shumedja Aff. I at para. 8 & Ex. A; Polzella Aff. at para. 8.

18. **Shumedja Aff. I at para. 9.**

19. **Shumedja Aff. I at para. 10.**

20. McCready v. The Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006)(" The Assessor utilized a reasonable, fair and non-discriminatory procedure for updating and correcting inventory data on tax parcels in the Town of Ossining. There are many reasons why an assessment may be changed to include the filing of building permits, letters of code enforcement, information from neighbors, corrections made by Realtors, appraisers and title searchers, MLS listings, information from surveys, applications for subdivisions and the creation of new parcels, reports from the planning board and required inspections. The Assessor reviews all sales occurring in the Town of Ossining and relies upon ' a procedure of screening all sales as outlined...in the manual of the International Association of Assessing Officers '. This screening process enables the Assessor to update and correct her inventory of tax parcels. The Assessor ' drives every sale '. With respect to ' outliers ' the Assessor attempts to determine if the sale was arm's length, whether there is a mismatch between what was assessed and what was sold and may ask for an interior inspection. An assessment will be revised only if previously unassessed real property is discovered and only items added or removed are assessed. In the absence of an inventory issue the Town of Ossining does not change assessments ").

21. **Polzella Aff. at para. 4.**

22. McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006)(" **Sometime prior to July of 2001 the Assessor received a copy of an MLS listing describing the subject property. A comparison of the MLS listing and the 1974 Property**

Card revealed the following unassessed property...The Assessor considered the ' disparity between the (MLS) listing and the property record card ' significant enough to warrant an inspection ' to update our records and ascertain whether the ratio was correct ' "). For another case where the Assessor relied upon an MLS listing to establish value see 325 Highland LLC v. Assessor of the City of Mount Vernon, 5 Misc. 3d 1018(A) (West. Sup. 2004)(" arm's length transaction of recent vintage is evidence of the ' highest rank ' in determining the true value of the property '").

23. Polzella Aff. At Ex. A.

24. Shumedja Aff. I at Ex. A (no entries under " Building Permit Record ").

25. Polzella Aff. at para. 5.

26. The Assessor herein conducted a more extensive investigation than that conducted by the Assessor in Carter v. The City of Mount Vernon, Index No: 19301/02, J. Rosato, Decision November 25, 2003 (West. Sup. 2003)(" (the Assessor) represents that the increase in assessment...was based...upon ' certain improvements ' having been made to the property, without proper permits, by the prior owner...the respondents do not so much as even identify, or enumerate just what specific renovations or improvements they are referring to "). Compare to the thorough investigation of building permit applications routinely performed by the Assessor in Bock v. The Assessor of the Town/Village of Scarsdale, 11 Misc. 3d 1052 (West. Sup. 2006).

27. Polzella Aff. at para. 5.

28. Polzella Aff. at para. 6 & Exs. B & C.

29. Polzella Aff. at para. 7 & Ex. D.

30. Polzella Aff. at para. 8.

31. Shumedja Aff. II at para. 3.

32. Shumedja Aff. II at para. 12.

33. Shumedja Aff. II at paras. 9-10.

34. See N. 21, supra.

35. Polzella Aff. At para. 4.

36. 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 ").

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

38. See e.g., Markim v. Assessor of the Town of Orangetown, 11 Misc. 3d 1063 (Rockland Sup. 2006)(" Newly created property such as the subject eleven properties may be initially assessed at or near market value "); MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 2006 WL 398305 (Rockland Sup. 2006)(" The subject property consists of a newly built apartment complex of nine buildings containing 168 rentable units, a clubhouse and caretaker's residence, all located at 1101-9408 Crystal Hill Drive, Town of Haverstraw... Since the subject property is newly created property it may be assessed, upon its completion, at or close to market "); 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 ").

See also: James Montgomery v. Board of Assessment Review of the Town of Union, 2006 WL 1549386 (3d Dept. 2006)(" In the SCAR proceedings, the respective petitioners relied upon evidence of their investment in the residential property comprised of the cost of acquisition of the lot, plus the cost of construction of the home, to demonstrate excessive assessment. The most reliable means of ascertaining the value of the property at issue for assessment purposes is market value...Market value is defined as ' the selling price upon which a reasonably informed buyer and seller would agree, in an open market setting, neither of whom is acting under any constraint or compulsion regarding the transaction '...In the absence of a recent arms-length sale of the property, the comparable sales method is the most reliable indicia of market value...Here, petitioners' evidence failed to sustain their burden of demonstrating that the respective assessments were excessive or unequal...we conclude that the comparable sales information relied upon by the Town Assessor

provided a rational basis for the SCAR determination ").

39. See e.g., James Montgomery v. Board of Assessment Review of the Town of Union, 2006 WL 1549386 (3d Dept. 2006) ("...petitioners claim that the Town Assessor uses current market values to assess newly constructed homes but not older existing residential properties, thus creating two different classes of residential properties that are treated differently for purposes of taxation. It is well settled that all real property within a taxing unit must be assessed at a uniform percentage of value, and, regardless of the methodology adopted by the Assessor, the result must reflect the realistic value of the property so that the tax burden of each property is equitable...Respondents do not dispute petitioners' contentions regarding the method of assessment of newly constructed residences within the Town and assert that such method is permissible and does not constitute ' selective assessment '... Petitioners have adequately stated a viable claim and presented evidence which creates significant material issues of fact which should be resolved at trial ").

40. 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 ").

41. 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.

42. This rule does not apply to the initial assessment of newly created property on vacant, unimproved land. See Ns. 38 & 39, supra.

43. Shumedja Aff. I at para. 10.