To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of

EDWARD CARROLL,

Petitioner(s),

-against -

THE ASSESSOR OF THE CITY OF RYE, NEW YORK, THE BOARD OF ASSESSMENT REVIEW OF THE CITY OF RYE, NEW YORK, AND THE CITY OF RYE, NEW YORK,

For a Review of the Assessment of Certain Real Property in the City of Rye, New York.

Respondent(s).

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DECISION/ORDER

Index Nos:
16738/03
16559/04
16530/05
20480/06
20910/07
23291/08
24454/09
25613/10

LaCAVA, J.

The trial of this Tax Certiorari, Real Property Tax Law (RPTL) Article 7 proceeding, challenging the valuation by the City of Rye (City or Respondent) of the real property owned by Petitioner Edward Carroll, took place before the Court on May 12 and 13; June 9, 10, and 13; and July 7, 2011. In addition, the Court conducted a Judicial View of the premises at the request of the parties on September 28, 2011. The following papers numbered 1 to 5 were considered in connection with the trial of this matter:

PAPERS	NUMBERED
PETITIONER'S POST-TRIAL MEMORANDUM	1
POST-TRIAL BRIEF ON BEHALF OF RESPONDENTS	2
PETITIONER'S POST-TRIAL REPLY MEMORANDUM	3
POST-TRIAL REPLY BRIEF ON BEHALF OF RESPONDENTS	4

Based upon the credible evidence adduced at the trial, and upon consideration of the arguments of respective counsel and the post trial submissions, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Petitioner, Edward Carroll ("Carroll"), is the owner of property located at 945 Forest Avenue, Rye, New York, identified on the tax map of the City of Rye (respondent City) as Section 153.15, Block 1, Lot 13 ["the subject property"]. In 1969, the subject property, which consisted of a 1.16 acre lot with approximately 139 feet of frontage on Long Island Sound, was created by the subdivision of a parcel owned by petitioner's father, Frank Carroll. In or about 1972, the Senior Carroll applied for and was granted a building permit to construct a temporary plywood storage shed, which was soon thereafter constructed at a cost of $400 on the subject property. In 1992, the subject property was gifted by deed from Frank Carroll to his son, and in February, 2001, petitioner applied for and was, in March, 2002, granted a building permit to construct a residence on the subject property ("the subject residence"). Thereafter, construction on the subject residence commenced, which construction continued until approximately October 2004, when a Certificate of Occupancy was issued for the residence. In June, 2003, Carroll gifted the subject property to himself and his wife. The home is approximately 5,000 square feet in size with four bedrooms, four and a half bathrooms, three fireplaces, and a three car garage. The Affidavit of Final Costs (necessary to obtain a Certificate of Occupancy and filed with the City of Rye Building Department) lists the total costs for construction at $1,448,210.

The Assessment Process

The Assessments by the City of Rye for the subject property were and are as follows:

Date	Land AV	Improvement AV	Total AV
1987-2002	$ 32,500	$ 400	$ 32,900
2003	$ 32,500	$ 71,200	$ 103,700
2004-date	$ 32,500	$ 87,700	$ 120,200

According to respondent's assessor, Noreen Whitty, after she was notified by the City's building department that a new home permit had been granted to petitioner for the construction of a new

structure on the subject property, she inspected the interior and exterior of the property in May 2003, evaluating not only the status of construction (she estimated it was 60% complete), the quality of the work, and the nature of materials used, but also the apparent intended nature of the home when it was completed (*i.e.* the number of rooms, including bed and bath-rooms; the number of fireplaces; the square-footage; and other features). She also consulted the filed building plans to confirm her observations and evaluation. Further, she considered the location of the property, fronting directly on Long Island Sound, as well as the current market values of the land and building, particularly in light of comparable sales of similar properties, to determine the full market value of the property. She then, in recognition of the fact that the property was only approximately 60% complete in her opinion, established a partial assessment for the 2003 assessment roll which was 60% of her concluded market value.

Whitty also visited the property in May 2004, and although able to inspect the exterior of the subject premises, she was unable to enter and inspect the interior. As in 2003, she evaluated the status of construction, and estimated that the home was now completed, noting the quality of the work and materials used. Finally, she again considered, before establishing an assessment for the 2004 roll, the water front location, and the current market values of the land and building, again weighing comparable sales to determine the full market value of the nearly-completed property. She then reduced that value to reflect the state of completion.

Upon being advised of the 2003 assessment, petitioner filed a grievance with the City Board of Assessment Review (respondent, BAR). The grievance was denied and petitioner filed the instant 2003 petition. Petitioner similarly, and with a similar lack of success, grieved the subsequent assessments, and filed the instant petitions for the tax years 2004 through and including 2010.

Whitty had affirmed prior to trial, and testified similarly, that she had calculated an estimation of the market value of the subject for 2003 to be $6,000,000, if completed. Based upon her further calculation that the residence was only 60% complete at that time, she reduced the 2003 estimated market value by 60% to arrive at a current market valuation of $4,115,000. Multiplication of her market valuation by the residential assessment ratio (2.52%) yielded the new assessment for that year of $103,700. In 2004, she adjusted her valuation (as a complete residence) slightly downward $5,250,000, which she then adjusted to account for her estimation of 90% completion of the residence. This raised the assessment to $120,200. At trial, she also sought to specify the additional criteria upon which, she stated, she had based her change in

assessment in the two years, noting that she used two comparable improved sales in Rye City, and also three vacant land sales. Upon cross-examination, however, she was unable to provide details of either of the improved sales, and one of the vacant sales. She also testified that her opinion on completion and construction costs had been based on her conversations with builders of typical construction costs. Whitty conceded, however, that the property card reflected none of these facts, and that she had kept no notes of the land sales which she had utilized in her calculations. She also admitted on cross-examination that one of the sales which she purportedly relied on, had occurred after her May 2003 valuation, and that, while the other two land sales had occurred substantially well before the May 2003 valuation, she had no record memorializing that she made any adjustment to these sales for the time occurring between the sale dates and the 2003 valuation date. Whitty also admitted that she had no notes relating to the improved sales that she stated she had used, nor notes or calculations relating to her opinion of construction costs.

Petitioner's appraiser, Paul Ritzcovan, testified to a value analysis which he based on the admitted land assessment prior to 2003, to which he added the equalized cost of the improvements conducted in 2003 ($972,534 [equalized to $24,508]) and 2004 ($425,346 [equalized to $9,740]). His conclusion of value was thus $2,262,222 for 2003 and $2,914,760 for 2004. Ritzcovan also performed a market analysis, employing several unimproved properties which he adjusted to the subject, and then reduced for the partial completion of the residence in those years. Although he calculated that the enhancement to value from the partial completion of the residence was 20% for 2003 and 50% for 2004, he expressed serious reservations concerning the amount over unimproved value which a prospective purchaser would pay for a parcel which had been improved by a partly completed (and indeed uninhabitable) residence. This methodology gave him market values of $2,400,000 for 2003 and $3,090,000 for 2004.

Respondent's appraiser, Ned Ferrarone, also employed two separate approaches, the first a derivation of cost in which he calculated a base land value, increased both by the cost of improvements as well as a 20% “entrepreneurial profit”. He conceded on cross-examination, however, that some of the sales data which he used had not been verified prior to completion of his report; and he could provide no solid support for his addition of entrepreneurial profit to the cost (*Cf*, The Appraisal of Real Estate, 12th ed., p 361
– such data must be market-based, and cost data must be closely examined to determine whether profit was already included in the cost of construction). Ferrarone was also questioned about his use

of a market approach which largely relied, rather than on vacant properties, on sales of improved properties where the buyers later removed the improvements and built new residences. Ferrarone also relied on an analysis of improved parcels, but he was likewise cross-examined about using unverified sales data, and whether one could properly value a partly completed residence by deriving a market value for the residence as if completed, and simply deducting the costs to reflect the property's current state of completion.

CONCLUSIONS OF LAW

Selective Reassessment

As this Court has previously noted in *Bock v. Town/Village of Scarsdale*, 11 Misc.3d 1052(A), 814 N.Y.S.2d 889 (Table) (Supreme Court, Westchester County, 2006), where a petitioner alleges a change in assessment in a tax year in which there is no municipal-wide re-assessment, the assessor is required to provide an explanation of both the change in assessment on petitioner's parcel, and his assessment methodology in general. The Court stated in *Bock*:

> Respondents have provided a facially reasonable explanation which appears to be fair and comprehensive, "applied even-handedly to all similarly situated property", 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").

In *Bock*, a developer had purchased a parcel for $1,400,000, and then gutted and renovated it before reselling it to the petitioner for $2,995,000. Affidavits attested to the costs in improving the property of approximately $744,000.00, which affidavits differed greatly from affidavits filed with the Town Building Department stating that the cost of the improvements was only $210,000.00. The Town Assessor in the Town/Village of Scarsdale had re-assessed the property upon completion of the aforementioned construction, pursuant to a plan by which she

reassessed property in the Town based upon improvements. The plan was described as the Town's "review and reassessment process and procedures", and included her conducting a thorough investigation of all building permits issued in the Town. After eliminating properties and building permits that did not warrant a change in assessment, for reasons including that work under a building permit had not commenced; work under a building permit was modified, canceled, delayed or not yet assessable; or the work involved individual items that are generally not assessed (i.e, fences, walls, roofs, windows, siding), permits where the approved work may result in a change in assessment were then subject to further review and investigation, including, where possible, a site/building inspection of the subject property taken. Any changes in assessments were then based on the equalized fair market cost of the new construction.

The Court, in *Bock*, found:

> 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.

In so finding, the Court upheld the assessment, as based on a comprehensive plan for reassessing parcels in the Town upon their improvement.

Similarly, in *Joan Dale Young v. Assessor of the Town of Bedford,* 9 Misc.3d 1107(A) (Supreme Court, Westchester County, 2005), aff'd. 37 A.D.3d 729 (2nd Dept. 2007), the assessor had made use of standard tables and an appraisal manual (which had been relied upon by previous assessors in the Town since 1974) as part of a comprehensive plan for assessing vacant land and newly built homes. The Court found no selective reassessment, since the Town had a comprehensive plan to reassess newly-created properties such as the subject therein. And, in a matter involving a reduction in assessment followed by an increase, in *MGD Holdings Hav, LLC v.*

Assessor of the Town of Haverstraw, 8 Misc.3d 1013(A) (Supreme Court, Rockland County, 2005) the petitioner challenged the assessor's raising the assessment from approximately $720,000 in one tax year to over $1.3 million in the following tax year. In opposition to petitioner's motion for summary judgment, respondent assessor described how he had reduced the assessment to the $720,000 figure in an earlier tax year, to account for a high vacancy rate in this commercial premises, and then had merely returned the assessment to the higher amount in a subsequent year when vacancies had decreased. The Court noted there that the "Respondents have provided an explanation for the increase in assessment ... (which) is facially reasonable").

Markim v. Assessor of the Town of Orangetown, 9 Misc.3d 1115(A) (Supreme Court, Rockland County, 2005) also involved a selective reassessment challenge to a change by an assessor. The Petitioners there were owners of town-house style houses in Paradise Landing, a development located in the Town of Orangetown, Rockland County. The builder completed the subject properties in late 1996 or early 1997, and the subject properties were sold between 1996 and 1998, with some being re-sold soon thereafter. The sale prices of the town houses ranged from $300,000 to $700,000, and some Petitioners made post-purchase improvements ranging in value from $5,000 to $20,000. The tax year 1997-1998 assessments imposed by the Town Assessor were in the range of $257,900 to $335,000, and the 1999 assessments were in the range of $346,600 to $420,900.

Petitioners challenged the tax year 1999 (and subsequent) assessments, alleging that the assessments were selective since no town-wide revaluation had occurred. The Town moved to dismiss, and in the supporting papers the assessor provided an explanation of both the changes in the individual properties' assessments, and his assessment methodology in general. After denial of the motion, the Court held oral argument during which the assessor's general methodology and valuation of these premises was explored. In essence, the Court found, the assessor was unable to satisfactorily explain either the 1999 assessments on the subject parcels, or his assessment methodology, the Court stating " The Assessor has failed to explain ... his methodology ... failed to provide a coherent (numerically based) explanation of his ... assessments of the subject properties", and the Court deemed the increases in 1999 selective reassessment.

This Court has frequently examined municipal re-valuations and found that the assessors' explanations of the changes were either lacking or non existent. In *Carter v. City of Mount Vernon,* Supreme Court, Westchester County, Rosato, J., November 26, 2003,

which involved reassessment based on improvements to the property, the Court stated "the respondents do not so much as even identify or enumerate just what specific renovations or improvements they are referring to", in finding selective reassessment by the City. Similarly, in *Villamena v. The City of Mount Vernon,* 7 Misc.3d 1020(A) (Supreme Court, Westchester County, 2005), the Assessor's explanation was that the reassessment of the subject property was based upon a multiple listing, which the Court found to be not only likely to be inaccurate, but a form of selective reassessment similar to reassessment on sale; the Court ordered a new inspection of the premises (to evaluate any improvements) and a reassessment. Finally, the Second Department found selective reassessment, where the Assessor did not submit an affidavit disputing the petitioner's claim that he had relied on the purchase price of a property in arriving at its assessed value, in *DeLeonardis v. Assessor of the City of Mount Vernon,* 226 A.D.2d 530 (2d Dept 1996).

This Court also dealt with the comprehensiveness of a reassessment-upon-improvement plan in *Leone v. Town of Cornwall*, 24 Misc.3d 1218(A) (Supreme Court, Orange County, 2009). There, the Town Assessor's predecessor had previously undertaken a Town revaluation, which, even after completion, contained substantial errors in the assessment roll, including mistakes in market value assessments and improvements on property not being properly reflected on the record cards. The incoming assessor then prepared a plan, which plan he hoped would take 5-6 years to implement, to re-document and review every property in the Town; within 5 years, he had actually reviewed nearly 70.0% of the roll, although many improved properties remained to be examined. The plan was initially contained in a letter to the Town Board, which included only the review of all new construction, the review of all sales with photographs, and the review of all other inventory by right of way observations; subsequently, he advised the Board by letter that the main focus of the plan was field reviews by building permits. When called to explain the assessment increase in the parcel at issue, however, the assessor's affidavit did not even mention the increase in that petitioner's assessment, much less offer an explanation for it, and no explanation of the increase appeared anywhere else in respondent's papers, nor did the assessor give any additional details of the methodology of the reassessment plan.

This Court held (on a petitioner's motion for Summary Judgment) that the Town failed to demonstrate the existence of triable issues of fact as to the reason for the increase in the assessment on the subject parcel, and whether or not the Town therein was following an equitable, comprehensive, written plan directed to the revaluation of all of the properties in the Town. As noted above, other than to characterize it in a report as an

"equalization" change, the Town failed to even mention the increase in petitioner's assessment, much less explain the basis for it. In addition, the assessor's two memos to town officials describing his proposed methodology described the plan in only minimal detail, and even those details involved only regular and intensive review of sales inventory and new construction, while any review of remaining inventory involved only observation from the roadway, not physical inspection of the premises, making equitable treatment for all properties in the Town unlikely. And the two memos seemed to be at odds with one another, as they described the "plan" differently. Indeed, whether the plan was ever even intended to be used for reassessment purposes is in doubt, since the plan was consistently described as an effort to update inventory records, and not for the purposes of reassessment. This Court found that the plan, as variously described, failed at the very least to constitute a comprehensive plan for the reassessment of all similarly-situated properties in the Town, and therefore was selective reassessment.

And in *Barnett v. Town of Carmel*, 26 Misc.3d 1210A (Supreme Court, Putnam County, 2009), again on a petitioner's motion for summary judgment following a reassessment based on improvements to a property, this Court stated:

> In opposition, respondent has failed to raise material issues of fact with respect to the change made to petitioner's tax year 2006 assessment, and to the methodology adopted by the Town to review its property inventory. In sum, the respondent assessor has offered varying explanations of who (generally, not he personally) observed what improvements to the premises and when. He asserts specifics about the condition of the building in 2002 (*i.e.* that it was not finished), without support from the property card or any other documents, or, it appears, his own first-hand knowledge, but instead supported by illegible and inexact records of other municipal departments, and the recollections of other persons in his employ. He has offered the explanation that the 2006 reassessment reflects a re-appraisal of the interior condition of the garage, but concedes that it was based **solely** on an observation of some movable appliance attached to or visible from the exterior of the premises, the exact nature of which he does not now recall, and said observation was not made personally but by an inspector in his office. He has asserted

> that the 2006 reassessment was based on this observation, although he concedes that an inspection of the garage to determine the actual interior condition did not take place for another two years. He asserts that, even though he did not personally observe the exterior condition at all in 2006, he nevertheless increased the assessment over and above that dictated by the inspector who did observe the condition, to an amount that was 60% greater than the 2002 assessment; and he does so without the least explanation of his methodology, or that of his inspector, in determining the amount of the increase to the assessment in 2006.

Finally, in *Shoecraft v. Town of North Salem*, 29 Misc. 3d 1222(A), 2010 N.Y. Slip Op. 51951 (U), * 9 (Supreme Court, Westchester County, 2010), this Court examined an assessment methodology which, over a number of years, had reduced assessments due to damage from neglect, and then sought to increase them following extensive improvements. The assessor, for the first tax year at issue there, estimated that permitted work had been done, and increased the improved and total values for the property. After a visit to the property, the assessor determined that her previous year's estimate was too high, whereupon she reduced the assessment for the following tax year. At trial, the assessor described her specific assessment methodology, starting with her finding out that work was being done on the premises. Her knowledge and estimation of the nature of the improvements and the work done was based on statements by others who had been to the premises, the real estate listings of the property, her calculations based on cost manuals, and her own estimates of value. She conceded, however, that none of these calculations, or estimates, were set forth clearly on the property card; in particular, the card failed to record that one increase (of nearly $330,000.00 in total value) was specifically based on not only post-damage restoration, but also on the improvements. In addition she admitted that the property card failed to clearly explain the composition and methodology of any of the five changes made over a period of ten years.

This Court found:

> When called to do so at trial with regards to tax year 2005, however, respondents and [assessor] Stanley failed to either properly explain and justify the increase of $101,700.00

that year, to offer convincing proof of her assessment methodology, or to present evidence that she had followed an equitable, comprehensive written policy, for reassessing properties upon improvement. Regarding the increase in 2005, Stanley stated that she increased the improved and total values by $101,700.00 by estimating that work for which a building permit had been sought in prior years (a guesthouse and pool), and whether it had been completed. She also pointed out the portion of the property card which contained calculations derived from costs for such improvements as set forth during the 1974 revaluation; these calculations reflected costs for installation of a guesthouse and a pool of $101,708.00, which amount she reduced after the inspection conducted later in 2005 to $96,509.00. However, Stanley failed to introduce the 1974 cost manuals themselves, nor did she describe in any detail the derivation of the costs, or the calculations which she made to arrive at the assessment figure. In addition, she failed to address the fact that the work associated with the guesthouse and garage alone were valued by her at approximately $100,000.00; that this amount, when added to the 2004 assessment, resulted in an increase in assessment from 2004 to 2005 of approximately 15%; that this increase had the effect of raising the assessed value of the property (at the 2005 equalization rate of 9.20%) by nearly $1,100,000.00 in market value; and that this amount of increase in assessed and market values was more than double the amount calculated by respondent's own appraiser for such work (approximately $500,000.00 in market value.)

Stanley also failed to offer definitive proof of her assessment methodology in general. As set forth above, respondent did not introduce the 1974 cost manuals, nor did Stanley set forth how those costs were derived, nor any calculations which she generally made to arrive at assessment increases upon improvement. Further, she was extremely confusing on the manner in which she had arrived at the prior

years' assessments, particularly as relates to the use of "estimates" to arrive at values, the function of tax lot apportionments, and the manner and timing whereby she sought to return to the property the amount of "depreciation" reduction from 1999. Stanley had great difficulty in specifying the dates upon which the Shoecrafts denied her requests for inspections; the dates of the inspections she was permitted to make; and in particular the property card failed to note in a clear manner essential details about the history of the premises.

Finally, at no time did respondent present evidence that Stanley was following an equitable, comprehensive written policy directed to reassessment upon improvement (indeed, her successor denied that such a policy existed during Stanley's tenure.) At no time did she state that any policy, if it existed, was put into writing. Neither was she able to testify to its comprehensiveness; she never stated that **all** similarly situated properties (i.e. all properties for which improvements had been made) were routinely reassessed based on the equalized cost of the improvements, or, for that matter, based on any other cost method. Rather, her testimony was simply that she reassessed on improvements "on all different levels, all different types" in the town, using "cost manuals" or "construction estimates." Furthermore, Stanley conceded that she based her estimates not only on statements of other parties as to conditions at the subject premises, but also on multiple listings, and as noted above in *Villamena, supra*, there is no way to judge the accuracy of such information, except that it is likely to be inaccurate. Thus, according to Stanley's own testimony, she did not provide an explanation and justification of precisely in what manner she arrived at the value of $101,700.00 as an accurate representation of the value of the improvements conducted at the premises; she presented only a vague and confusing description of her general assessment methodology; and she most assuredly presented

> no evidence that in 2005 she followed an equitable, comprehensive, written policy, for the reassessment of Town properties upon their improvement. Consequently, the $101,700.00 increase in the assessed value in 2005 over the 2004 value of $760,750.00 constitutes a selective reassessment of the subject premises (*Shoecraft, supra*.).

In sum, then, a municipal assessor who seeks to reassess individual properties, rather than the entire tax roll in a municipality, 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" (*Id.)*, and any such reassessment should be conducted pursuant to a comprehensive written plan to insure that any such reassessments are applied even-handedly to all similarly-situated properties.

Here, there is no dispute that Whitty reassessed the subject property in 2003; the assessed value in 2002, $32,900, was changed by Whitty in 2003 to $103,700, based on her observations of the work being done on the premises. No evidence, however, has been presented to this Court that a municipal-wide reassessment took place in respondent City in that year. *10 ORPS Opinions of Counsel SBRPS 60* could not be clearer–

> [W]henever 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

Respondent contends, however, that this rule, and the above-cited cases, are inapplicable to the instant case, since the property here is, they allege, "newly-created", and may be valued with reference to the market by an assessor. While it is indeed true that market valuation for new properties is accepted and proper, what respondent fails to consider is that the creation of

new property, and the resort to the market for valuation, is merely one part of an assessor's requirements upon reassessment in a year in which no municipal-wide reassessment takes place. Rather, the assessor must both "explain **and** justify the changes...offer[ing] proof of his assessment methodology in general so as to successfully withstand any ... challenge"(*Shoecraft, supra)*.

Whitty failed to do that here, however. As petitioner properly argues, Whitty had affirmed prior to trial that she estimated the market value of the subject to be $6,000,000, if completed, as of May 1, 2003, reduced by 60% to $4,115,000 to reflect her calculation of the degree to which the house was completed. She then multiplied this amount by the residential assessment ratio (2.52%) to reach her new assessment of $103,700. She generally followed the same procedure in 2004, calculating an as-complete market value, and adjusting for its estimated 90% completion, to raise the assessment to $120,200. At trial she sought to specify additional criteria upon which she based her change in assessment, noting that she used two comparable improved sales in Rye City (neither of which she could provide details of), three vacant land sales (one of which she also was unable to detail), and her opinion of typical construction costs, which was based on conversations with builders about such costs. Notably, little of this information appeared in her prior affidavits in this matter. Whitty kept no notes of the land sales which she considered. She cited one such sale which occurred after her May 2003 valuation; and the other two land sales she purported to rely on occurred substantially before the May 2003 valuation, yet she had no records that she made any adjustment to these sales for time. She also had no notes relating to the improved sales she stated that she had used. Finally, Whitty was unable to produce notes or calculations relating to her opinion as to construction costs.

Thus, while Whitty may have explained her reasoning for the assessment changes, namely that there were improvements, she wholly failed to justify those changes, as required. Her changes do not appear, from her testimony, to have been based on objective data; they do not appear to have been calculated based on an accepted approach or methodology; she appears to have consulted no manuals, tables, or any other authorities on costing; and, most importantly, whatever basis she used for her conclusions, it did not appear in an "...equitable, comprehensive, written plan directed to the revaluation of all of the properties in the Town." *Leone, supra*. Consequently, having failed in its burden to explain and justify the 2003 and 2004 reassessments in the instant matter, namely the increase in the assessed value in 2003 to $103,700, over the 2002 value, and the increase in assessed value in 2004 to

$120,020 over the 2003 value, respondent's actions are found to have constituted selective reassessment of the subject premises.

FINAL CONCLUSION AS TO ASSESSED VALUE

Generally, a finding of selective reassessment, in the Court's opinion, would end the matter, the Court directing as a consequence the return of the assessment for the years for which selective reassessment was found, and any subsequent years, to that amount which was in effect the year before the selective reassessment took place (*Shoecraft*, *supra*). Here, however, petitioner, while urging the Court to vacate the assessments, also urges the Court to accept petitioner's proposed assessment as calculated by the sum of the assessments for 2003 and 2004, to which, each year, is added the equalized assessed value of the improvements made that year. Indeed, petitioner concedes that these amounts, set forth as follows, represent the "floor" for valuation:

Year	AV (Land)	AV (Improvements)	Total AV
2003	$32,500.00	$24,508.00	$57,008.00
2004	$32,500.00	$34,248.00	$66,748.00

As set forth in greater detail above, petitioner's appraiser argues that the floor in value is set by reference to the admitted land assessment prior to 2003, to which should be added the equalized cost of the improvements conducted in 2003 and 2004 (agreed to have been $972,534 [equalized to $24,508] and $425,346 [equalized to $9,740]). Market value for these amounts is $2,262,222 for 2003 and $2,914,760 for 2004. Ritzcovan supported this analysis by a separate sales comparison approach in which he analyzed several unimproved properties, adjusted them for differences from the subject, and modified to account for the partial completion of the residence in those years (he calculated the enhancement to value from the partial completion of the residence at 20% for 2003 and 50% for 2004, while expressing great reservation about how much any prospective purchaser would pay for a parcel improved by a partly completed, uninhabitable residence). He arrived at values of $2,400,000 for 2003 and $3,090,000 for 2004.

Respondent's appraiser, to the contrary, first used a cost approach, in which he derived a land value to which he added not

only the cost of improvements but also a 20% "entrepreneurial profit." Among other proper objections to this approach, however, including the use of unverified sales data as well as the unexplained application of profit to the cost, the Court notes that, of the six sales Ferrarone utilized, four were not vacant properties, but improved properties where the buyers later removed the improvements and built new structures. As petitioner properly argues, derivation of an unimproved land value in such circumstances has generally been found unreliable (*See, City of Birmingham v. Kramer*, 26 A.D.2d 726 [3rd Dept. 1966]). Ferrarone's improved analysis also suffered from the same objections, specifically the use of unverified sales data; the simple (and unsupported) subtraction of completion costs from completed sales to derive a value pre-completion; and several significant adjustments putting into question whether the comparable properties are indeed truly comparable.

Upon this concession by petitioner of the floor in value, then, and particularly in light of the above-mentioned concerns the Court has with Ferrarone's methodology, as well as the Court's general agreement with Ritzcovan's methodology, the Court accepts Ritzcovan's aforementioned calculations, consisting of the derivation of the proper assessment by taking the 2002 assessed value, and adding to it the conceded construction costs, as valid in setting forth the floor in value. Therefore, having found that the reassessments conducted by the assessor in 2003 and 2004 constitute selective reassessment, and having accepted, at petitioner's urging, that the floor for value in those years consists not only of the 2003 assessment, but also the sum of the assessed land values for each of 2003 and 2004, plus the equalized value of the improvements for those years, the Court concludes that the Assessed Values for 2003 and 2004 are:

Year	AV (Land)	AV (Improvements)	Total AV
2003	$32,500	$24,508	$57,008
2004	$32,500	$34,248	$66,748

Assessor Whitty having declined to reassess in any of the tax years (2005 through and including 2010) that followed, respondent is bound by the 2004 assessed value as established herein for tax years 2005 through and including 2010.

CONCLUSION

The Petitions, with costs [R.P.T.L. § 722[1]], are sustained to the extent indicated above, the assessment rolls are to be corrected accordingly by the assessor utilizing the aforesaid Assessed Values as set forth above, and any overpayments of taxes are to be refunded with interest.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Submit Judgment on Notice.

Dated: White Plains, New York
November 21, 2012

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HON. JOHN R. LA CAVA, J.S.C.

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