SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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

Petitioners,

-against-

THE ASSESSOR OF THE TOWN OF ORANGETOWN,

Respondent.

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

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DECISION & ORDER

Index No:7422-04

DICKERSON, J.

SELECTIVE REASSESSMENT NO. 8 : REMEDIES

In this latest examination of the concept of " selective reassessment "[1] this Court is called upon to reconsider the remedy it ordered after finding that the Respondent Assessor had failed to adequately explain[2] his methodology in reassessing the subject eleven

“ separate town-house style houses in the Paradise Landing Home Owner’s Association “ in 1999 [see Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115(A)(“ This Court finds that the Respondent’s methodology in reassessing the subject properties in 1999 was unfair, unreasonable and discriminatory and is a form of selective reassessment. The Assessor decided to partially assess nine [301, 304, 305, 306, 307, 309, 310, 311 Cottonwood, 211 Erie] of the eleven subject properties in 1997 at 80% of market value [211 Erie subsequently reduced by stipulation] and the remaining two properties [306 Gair, 207 Gair] in 1998 at full value. In 1999 the Assessor, instead of adding the remaining 20% of the 1997 determined market value for the nine properties together with the value of any improvements, reassessed in 1999 at an ‘ overall market value ‘ using an incoherent and inexplicable methodology “)].

The Appropriate Remedy Was Selected

The remedy ordered by this Court was that “ The real property assessments for the 2004 assessment year for the subject properties are vacated and the Assessor shall conduct a new assessment for the calendar year 1999 in accordance with the findings herein “. This particular remedy seeks to address the complaint in Petitioners’ Notice of Petition [“ the 1999 assessment increases-and subsequently fixed upon the 2004 Town of Orangetown Assessment Roll-on the properties owned by each

petitioner were affected by errors in law, were arbitrary and capricious, were without rational basis and thereby violated petitioners' equal protection rights "] and is consistent with remedies imposed by other Courts which have found instances of selective reassessment [See e.g., Matter of Charles Krugman v. Board of Assessors of the Village of Atlantic Beach, 141 A.D. 2d 175, 533 N.Y.S. 2d 495 (2d Dept. 1988) (RPTL Article 7; assessment vacated and " matter remitted... for a new assessment "); Matter of DeLeonardis v. City of Mount Vernon, 226 A.D. 2d 530, 641 N.Y.S. 2d 83 (2d Dept. 1996) (CPLR Article 78; reassessment vacated and " matter is remitted...for a new assessment in accordance herewith "); Feigert v. Assessor of the Town of Bedford, 204 A.D. 2d 543, 614 N.Y.S. 2d 200 (2d Dept. 1994)(CPLR Article 78; assessment invalidated and remitted " for a new assessment for the 1991 tax year "); Matter of Villemena v. City of Mount Vernon, 7 Misc. 3d 1020(A)(West. Sup. 2005)(RPTL Article 7; no selective reassessment found; 2003 assessment vacated; matter remitted for a new assessment); Carter v. The City of Mount Vernon, Index No: 19301/02, J. Rosato, Decision November 25, 2003 (RPTL Article 7; 2002 assessment void and invalid; remitted for a new assessment)].

The Motion To Reargue

Not content with the successful outcome of their CPLR Article 78 Petition and unwilling to wait for the Respondent Assessor to obey the

Court's Order and conduct a new reassessment for 1999 the Petitioners have made a motion seeking reargument and renewal of " Petitioners' Proceeding filed pursuant to CPLR Article 78 "[3] [initially mislabeled as " prior motion dismissing the petition "[4]] which is not only premature but goes beyond the scope of a CPLR Article 78 proceeding and seeks to challenge the rationale for partially assessing individual properties which Petitioners' counsel admits requires a factual determination of the state of completeness of each individual townhouse[5] [See e.g., In the Matter of M. Kaufman 42nd Street Co. v Board of Assessors of Atlantic Beach, 273 A.D. 2d 239, 240, 709 N.Y.S. 2d 445 (2nd Dept. 2000) quoting from Matter of Board of Mgrs. of Greens of N. Hills Condominium v. Board of Assessors of the County of Nassau, 202 A.D. 2d 417, 419, 608 N.Y.S. 2d 694 (2nd Dept. 1994)("'Ordinarily, challenges to assessments on the grounds that they are illegal, irregular, excessive or unequal are to be made in a certiorari proceeding under RPTL Article 7... However, where the challenge is based upon the method employed in the assessment of several properties rather than the overvaluation or undervaluation of specific properties, a taxpayer may forgo the statutory certiorari procedure and mount a collateral attack on the taxing authority's action through either a declaratory judgement action or a proceeding pursuant to CPLR Article 78... In reviewing a taxpayer's claim to determine whether this exception to the statutory procedure based upon the taxing authority's methodology has been demonstrated, mere allegations, unsupported by evidentiary matter, that

the attack is on the methods employed rather than individual evaluations, are not enough to relieve plaintiffs of the obligation to pursue their relief via the provisions of Article 7 of the Real Property Tax Law '")]. In fact, there is no basis for Petitioners' motion to reargue since the Court neither " overlooked or misapprehended the relevant facts, or misapplied any controlling principal of law " [Foley v. Roche, 68 A.D. 2d 558, 567, 419 N.Y.S. 2d 588 (1st Dept. 1979); see also Carrillo v. PM Realty Group, 16 A.D. 3d 611, 793 N.Y.S. 2d 69 (2d Dept. 2005)] but carefully considered the positions of Petitioners and Respondent in numerous submissions underlying the Court's two earlier decisions [Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115(A)(selective reassessment found) and 6 Misc. 3d 1042(A)(CPLR Article 78 appropriate for challenging selective reassessment)] and at oral argument on July 18, 2005.

The 1997 Partial Assessments

Nonetheless, this Court will once again examine the Petitioners' arguments. Stated, simply, the Petitioners assert that " this Court has nonetheless fashioned a remedy that denies the Petitioners much of the relief requested in the Petition ". Specifically, the Petitioners once again claim that the Respondent Assessor " considered 9 of the 11 subject properties to have had ' partial ' assessments as of the March 1, 1997 taxable status date " and that this was improper for three

reasons. First, each of the Petitioners claim that when they purchased and moved into their townhouses they were " completed ".[6] Second, some Certificates of Occupancy (COs) were issued before the taxable status date of March 1, 1997 [" I listed six of the COs issued in 1997, each with the date of issuance. Three of the six COs were issued before March 1, 1997, while a fourth was issued on March 4, 1997. Two others were issued in April 1997 "[7]]. Third, the Respondent Assessor did not make a " physical inspection "[8] of the subject properties and has not " provided any documentary evidence in support of his claim that the nine townhouses were 80% built as of March 1, 1997: no contemporaneous sketches, notes or photographs or any other proof was offered ".

In addition to previously considering all of the aforesaid this Court also evaluated the evidence presented by the Respondent Assessor which included (1) the Notices of 80% Partial Assessments sent in 1997 regarding eight of the subject properties [301, 304, 305, 306, 307, 309, 310, 311 Cottonwood][9][meaning, of course, that the Petitioners Lowell [207 Gair], Siegel [306 Gair] and Kaiser [211 Erie] did not receive 80% partial assessment notices (see discussion below)] and (2) the Assessor's explanation of the process by which he established a 100% assessed value in 1997 for nine of the subject properties and then decided to apply only 80% of that assessment for 1997 and 1998[10]. Based upon all of the evidence submitted the Court decided, among other things, that the Respondent Assessor's determination to partially assess nine of the subject properties [301, 304, 305, 306, 307, 309, 310, 311

Cottonwood, 211 Erie] in 1997 was reasonable although his methodology underlying the 1999 reassessments of all eleven of the subject properties was not.

Assessing Newly Created Property

Newly created property such as the subject eleven properties may be initially assessed at or near market value [See e.g., Joan Dale Young v. The Town of Bedford, 2005 WL 2230399 (West. 2005) (" it is appropriate on the initial assessment of newly created property for an Assessor to consider, among other factors, [and "' so long as the implicit policy is applied even-handedly to all similarly situated property '"[11]] " the current market value (of the newly created property and of comparable properties in the Town of Bedford) to reach a tax assessment "[12]); 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 ")].

Partial Assessments Are Proper

The partial assessment of newly created property is proper as the parties herein have recognized [" Mr. Albert:...I think that it's clear that if a building, a newly built building, is not finished, the Assessor should have the right to assess something to reflect what actually has been built up to that taxable status date. That doesn't seem to be a problem and I think it's typical of the Assessor to do that. The Court: So, you don't have any problem with that? Mr. Albert: With that basic question, if there is actually a partially built building on a site, then it can be assessed and there is some acknowledgment in the subsequent year that there be an additional assessment if the building is further completed "[13]]. The partial assessment should be based upon a reasonable determination that the property has not been completed [See e.g., Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004 (assessor failed to explain how he arrived at a partial assessment; " (Assessor) presented nothing of evidence in admissible form to contradict the factual allegations of petitioners "]. In addition, and most importantly, the property owner should receive formal notice of the partial assessment [In Teja, supra, the Assessor did not give the property owners notice of a partial assessment although " the Town's assessment record of the subject property shows the initials P.V.

(Partial Value) next to the objected to valuations " nor did the Assessor seek to explain to the Court the meaning of " P.V. " or how and why he chose to partially assess the property (" nothing of evidence in admissible form ")] and given an opportunity to challenge such an assessment before the Board of Assessment Review and through an RPTL Article 7 proceeding, if necessary.

Looking For A Windfall

It appears that some of the Petitioners may be seeking what amounts to an extraordinary windfall [for newly created properties] by seeking to categorize the 1997 80% partial assessments as full assessments notwithstanding receipt of notice of 80% partial assessments and not challenging same at the Board of Assessment Review[14] in 1997 or 1998. The Petitioners purchased their homes at market rates [See e.g., Matter of 325 Highland LLC v. Assessor of the City of Mount Vernon, 5 Misc. 3d 1018(A) (West. Sup. 2004)(" It is well settled that ' the purchase price set in the course of an arm's length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the ' highest rank ' to determine the true value of the property at the time '"]. A comparison of the purchase price and the 1997 partial assessed value for each of the subject townhouses reveals the enormity of the windfall being sought [301[15] Cottonwood purchase price of $409,643, 1997 partial assessed value of $286,700; 304[16] Cottonwood

purchase price of $700,000, 1997 partial assessed value of $329,900; 305[17] Cottonwood purchase price of $461,686, 1997 partial assessed value of $313,400; 306[18] Cottonwood purchase price $421,839, 1997 partial assessed value of $275,900; 307[19] Cottonwood purchase price of $422,267, 1997 partial assessed value of $297,500; 309[20] Cottonwood purchase price of $459,900, 1997 partial assessed value of $335,000;, 310[21] Cottonwood purchase price of $374,900, partial assessed value of $275,900; 311[22] Cottonwood purchase price of $353,000, 1997 partial assessed value of $257,900; 211[23] Erie purchase price of $349,900, 1997 partial assessed value of $314,900 reduced to $286,918]. These nine properties have received enough of a windfall by being partially assessed in 1997, said partial assessment being carried through 1998. The purpose of this tax certiorari proceeding is not to help subsidize the Petitioners' purchase of luxury housing by condoning additional windfalls such as those sought herein [See e.g., MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 2006 WL 398305 (Rockland Sup. 2006)].

The Motion To Renew

The Petitioners have also moved to renew pursuant to CPLR § 2221(e)(2). As with the Petitioners motion to reargue there is no basis for such a motion since the newly submitted affidavit of Petitioner Alfred Markim[24] regarding the " completeness " of the construction of the subject properties [and his proposed testimony] was previously set

forth by each Petitioner in affidavits[25] and, along with other evidence of " completeness " provided by the parties and their counsel, was carefully considered by this Court in rendering the underlying decision [See e.g., Foley v. Roche, 68 A.D. 2d 558, 568, 419 N.Y.S. 2d 588 (1st Dept. 1979)(" An application for leave to renew must be based upon additional material facts which existed at the time the prior motion was made, but were not then known to the party seeking leave to renew, and, therefore, not made known to the court "); Pahl v. Kassis, 182 A.D. 2d 22, 27, 588 N.Y.S. 2d 8 (1st Dept. 1992)(" A motion to renew...is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal ")].

Enthusiasm Is Not Enough

While this Court can appreciate the enthusiasm of Petitioners' counsel in representing the interests of his taxpayer clients, counsel must be careful not to misrepresent the facts[26] upon which Petitioners' motion to renew is based. Specifically, Petitioners assert that " the Assessor was allowed to speak directly to the Court "[27] at the oral argument held on July 18, 2005 [" The result of this one-sided testimony is that the Court did not hear the Petitioners' side of the narrative from the individuals who know it best...this Court might therefore have received a skewed impression of when the townhouses were

complete "[28]]. A careful review of the fifty-nine page transcript of the July 18, 2005 oral argument [provided to the Court [and presumably read] by Petitioners' counsel] does not bear out counsel's argument that the Respondent Assessor was given an opportunity to speak directly to the Court[29]. According to the transcript the Respondent Assessor asked to speak on two occasions to which Petitioners' counsel objected[30]. In addition, both sides were given ample opportunity to provide the Court with additional factual statements to explain their respective positions[31] which they did.

GUIDELINES FOR A PROPER REMEDY

In implementing the ordered remedy the Respondent Assessor should consider the following guidelines.

Property Owners Should Receive Notice Of Partial Assessments

Property owners such as the Petitioners herein should receive formal notice of the intention of the Assessor to partially assess their property thus giving property owners an opportunity to challenge such an assessment before the Board of Assessment Review and through an RPTL Article 7 proceeding, if necessary. Hence, since Petitioners Kaiser, Lowell and Siegel did not receive notice of the 80% partial assessment their initial assessments in 1997 [Kaiser [211 Erie] at $314,900

reduced to $286,918] and 1998 [Lowell [207 Gair] at $290,300 and Siegel [306 Cottonwood] at $368,800] will be considered 100% assessments to be increased in 1999 only by the cost of improvements [See e.g., Bock v. Assessor of the Town/Village of Scarsdale, 2006 WL 328503 (West. Sup. 2006)(reassessment limited to cost of improvements); Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)(West. Sup. 2005)(reassessment limited to cost of improvements)].

The Assessments Of The Eight Remaining Properties

The initial assessments of the eight remaining properties in 1997 [301 [$286,700], 304 [$329,900], 305 [$313,400], 306 [$275,900], 307 [$297,500], 309 [$335,000], 310 [$275,900], 311 [$257,900] Cottonwood] will be considered to be 80% of full assessment. These property owners received formal notice of the 1997 partial assessments, had an opportunity to challenge such partial assessments before the Board of Assessment Review and through an RPTL Article 7 proceeding and chose not to do so. The 1997 partial assessment was carried through 1998 and again these property owners chose not to challenge the partial assessment. Therefore, the new 1999 reassessments will add the remaining 20% and the cost of any improvements.

Based upon the foregoing the Petitioners' motion to reargue is granted and upon reargument the Court adheres to its earlier decision

subject to the clarifications set forth herein. As for the Petitioners' motion to renew it is denied in its entirety.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, N.Y. 10606
March 16, 2006

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HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

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ENDNOTES

1. This Court has previously examined the concept of selective reassessment in MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 2006 WL 398305 (Rockland Sup. 2006)(reargument of summary judgment motion finding of selective reassessment denied) and 8 Misc. 3d 1013(A)(Rockland Sup. 2005)(motion for summary judgment finding selective reassessment denied); Bock v. Assessor of the Town/Village of Scarsdale, 2006 WL 328503 (West. Sup. 2006)(no selective reassessment found); Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115(A)(selective reassessment found) and 6 Misc. 3d 1042(A)(Article 78 appropriate for challenging selective reassessment)(Rockland Sup. 2005), Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)(West. Sup. 2005)(no selective reassessment found), Dale Joan Young v. The Town of Bedford, 9 Misc. 3d 1107(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; Siegel, Reassessment on Sale, New York Law Journal, August 2, 2005, p. 16.

2. Assessors must be prepared to explain their methodology in assessing real property when called upon to do so. See e.g., MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 2006 WL 398305 (Rockland Sup. 2006)(" (This Court) once again 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 ", for the 2004 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 "); Bock v. Assessor of the Town/Village of Scarsdale, 2006 WL 328503 (West. Sup. 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 "', for the 2002 change in assessment on the subject property which meets the threshold recommended in 10 ORPS Opinions of Counsel SBRPS 60 "; no selective reassessment found); Dale Joan Young v. The Town of Bedford, 9 Misc. 3d 1107(A) (West. Sup. 2005)(" for the purpose of assessing newly created property on vacant, unimproved

land such as Petitioner's home 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 in the Town of Bedford "; no selective reassessment found).

3. Affirmation of Joseph F. Albert sworn to February 24, 2006 [" Albert Reply Aff. "] at p. 1.

4. Petitioners' Notice of Motion dated December 5, 2005 [" Notice of Motion "].

5. **July 18, 2005 Transcript of Oral Argument [" Trans. "] at p. 12 [" Mr. Albert: I think there is a tremendous factual dispute about whether or not these (townhouses) were actually completed or, in fact, it's the position of the Petitioners that some of them were absolutely one hundred percent completed and some of the others were probably not one hundred percent completed, but almost very close to being actually completed. "] and p. 15 [" Mr. Albert: There are other pieces of evidence which are compelling. It varies from individual to individual. There is no question about that. It's not as strong in some cases and it's very strong in others. "].**

6. Petitioners' Memorandum of Law in Support of Motion to Reargue and Renew [undated] [" P. Memo. "] at p. 3 (" each Petitioner submitted one or more Affidavits describing the date that each owner moved into his or her completed townhouse "); See also Affidavit of Alfred Markim sworn to October 26, 2004 at para. 2 (" I purchased the completed new home located at 305 Cottonwood Court in March 1997 "); Affidavit of Audrey Moran sworn to October 28, 2004 (" I purchased and moved into the completed new home at 301 Cottonwood Court in February 1997 ").

7. P. Memo. at p. 3.

8. P. Memo. at pp. 4-8.

9. Affidavit of Richard I. Goldsand sworn to December 29, 2004 [" Goldsand Aff. "] at Exs. A & B; P. Memo. at p. 10.

10. Affidavit of Brian Kenny sworn to August 15, 2005 [" Kenny Aff. "] at paras. 4-8

" 4. In the instant case, the petitioners were the owners of attached townhouse style residences that were part of an 82 unit subdivision that went forward in various stages. Your

deponent used the mass appraisal technique. The aim of the mass methodology is not only to fairly assess large numbers of properties to reflect proper market value (or a percentage thereof) but also to fairly assess like properties so as not to overburden like properties with unequal assessments. In other words, to assess comparative properties with similar market value with similar assessments.

5. Due to the nature of mass appraising and the type of properties in question, and after visiting the site, your deponent determined that these attached residences, when assessments were first fixed upon them in 1997, would be considered to be 80% complete as a whole. In this case guidelines used by your deponent's office generally employ the following scale of completeness to properties: (a) 10% : land cleared-slab or foundation installed, (b) 20-20% : Framing only-skeleton of structure, © 40% : Enclosed structure with roof, (d) 50% : Enclosed structure with windows-exterior substantially completed, (e) 6–70% : Partial completion of interior: electrical, sheetrock, furnace, a/c. etc., (f) 80% : Fixtures installed, (g) 90% : Trim work, painting, (h) 100% : Landscaping may be complete. Because of the nature of the tax law on March 1st of each year a determination has to be made as to the status of newly constructed or improved properties. The determination was that the properties in question represented 80% completion and as such that partial or incomplete assessment would be reflected in the individual assessment for the upcoming year, i.e., 1997.

6. In this case using the mass appraisal technique, the overall assessments for the units average $376,036 (at 100% complete); the 1997 partial assessment average was $301,656.00. This number represented a 19.75% reduction from the 100% valuation which remained unchanged for the 1998 year as well. This is illustrated on the calculation sheet annexed hereto... This, then, was the methodology utilized, i.e., complete assessment value is determined and then a partial percent of completion is calculated due to the property status as of March 1st for the following year ".

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

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

13. **Trans. at p. 11.**

14. Kenny Aff at para. 7 (" All the petitioners, of course, have had ample time to inquire regarding their particular assessment valuations starting in 1997. In fact Petitioner Stewart Kaiser

previously protested his assessment pursuant to Article 7 of the Real Property Actions and Proceedings Law... ").

15. Affidavit of Audrey Moran sworn to October 28, 2004, paras. 2-3.

16. Affidavit of Ralph Berk sworn to October 28, 2004 at paras. 2-3.

17. Affidavit of Alfred Markim sworn to October 26, 2004 at paras, 2-3.

18. Affidavit of Richard Esposito sworn to October 28, 2004 at paras. 2-3.

19. Affidavit of Ann Costello Bergerman sworn to October 28, 2004 at paras. 2, 4.

20. Affidavit of Joan Day sworn to October 28, 2004 at paras. 2-3.

21. Affidavit of Robert J. Timberger sworn to October 28, 2004 at paras. 2-3.

22. Affidavit of Horace Gibbs sworn to October 28, 2004 at paras. 2-3.

23. Affidavit of Stewart Kaiser sworn to October 25, 2004 at paras. 2-4.

24. Affidavit of Alfred Markim sworn to December 2, 2005 [" Markim Aff. II "].

25. See Ns. 15-24, supra. For example see Affidavit of Alfred Markim sworn to October 26, 2004 at para. 2 (" I purchased the completed new home located at 305 Cottonwood Court in March 1997 "); Affidavit of Audrey Moran sworn to October 28, 2004 (" I purchased and moved into the completed new home at 301 Cottonwood Court in February 1997 ").

26. See e.g., 22 NYCRR § 130-1.1(a),(c)(3); Pahl v. Kassis, 182 A.D. 2d 22, 32-33, 588 N.Y.S. 2d 8 (1st Dept. 1992).

27. P. Memo. at p. 11.

28. P. Memo. at p. 13.

29. P. Memo. at p. 5 (“ (It is noteworthy that the Assessor sat mute while his attorney stated multiple times that physical inspections had been made...Why did he not correct this misapprehension immediately? “).

30. Trans. at pp. 28-29 (Mr. Goldsand:...Mr. Kenny does have...If he’d be given a chance, he has an explanation. The Court: I don’t know. Do you want to talk or what? Mr. Albert: Well, I thought there were no witnesses today, frankly, I really did “); p. 39 (Mr. Kenny: Could I say a few words? Mr. Albert: He shouldn’t be talking “).

31. Trans. at p. 52-53 (“ but I want the Assessor to explain numerically this position...I want to see the numbers on all of this. I am going to give you a chance to do this and you respond to that...You could make two submissions “).