SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In The Matter of the Application of
DALE JOAN YOUNG,

Petitioner,

-against-

THE TOWN OF BEDFORD, THE ASSESSOR OF THE TOWN OF BEDFORD and THE BOARD OF ASSESSMENT REVIEW OF THE TOWN OF BEDFORD,

Respondents.

For a Review under Article 7 of the RPTL.

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Index No: 16639/04

DECISION & ORDER

DICKERSON, J.

STONE BRIDGE LANE : SELECTIVE REASSESSMENT NO: 4

In this most recent exploration of the concept of " selective reassessment "[1] this Court is called upon to decide if the prohibition against reassessment of improved property " utilizing the recent purchase price as a basis for determining the increase in assessed value of a property on which improvements have been made " [Matter of DeLeonardis v. Assessor of the City of Mount

Vernon, 226 A.D. 2d 530, 532-533, 641 N.Y.S. 2d 83 (2d Dept. 1996)[2]] applies[3] to the initial assessment of newly created property on vacant, unimproved land such as Petitioner's magnificent " 6,173 square foot, six (6) bedroom, six and a half (6½) bathroom residence and an attached three (3) car garage "[4] with an admitted " full market value " of $2,020,408.00[5] built on 4.946 acres of land in the Town of Bedford, New York. Stated, simply, it does not and, further, 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 '"[6]] " the current market value (of the newly created property and of comparable properties in the Town of Bedford) to reach a tax assessment "[7].

The Motion & Cross Motion

The Petitioner, Dale Joan Young, the owner of property located at 107 Stone Bridge Lane and identified on the tax map of the Town of Bedford as Section 72.07, Block 1, Lot 9 [" the subject property "], seeks an Order pursuant to C.P.L.R. § 3212 finding that the subject property " was improperly and unlawfully assessed by the Respondents " and seeking a hearing on " the issue of the value of the improvements "[8]. The Respondents have cross moved pursuant to C.P.L.R. § 3212 for summary judgment " in their favor and dismissing "[9] the Petitioner's Article 7 petition.

Petitioner's Position

The Petitioner is the owner of the subject property which in 2003 was 4.946 acres of vacant land and is " one of seven(7) lots created through a subdivision of property approved in 1992 "[10]. The subject property, located in a four-acre (R-4A) residential zone in the Town of Bedford, was assessed in 2003 at $36,400 which Petitioner describes as " underassessment " and Respondents describe as " proportionately low "[11].

Petitioner's New Home

Evidently, the Petitioner's husband is a builder and built five magnificent homes on five of the seven lots, four of which were sold, respectively, for $1,830,000, $1,930,000, $2,035,000 and $1,980,000 and assessed, respectively, at $234,000, $224,800, $222,500 and $213,400[12]. The fifth home the Petitioner and her husband decided to keep as their own and in 2004 the subject property was assessed at $217,800[13].

The B.A.R. Complaint

On June 1, 2004 the Petitioner filed a Complaint with the Board of Assessment Review for the Town of Bedford[14] [“ B.A.R. “] noting that the subject property had a “ full market value “ of $2,020,408 and claiming that it should be assessed at “ 8.58% of full value “ or “ $173,350 “ because the “ Total assessment exceeded the amount that should have been attributed to the contributory value added to last year’s total assessed value “. The B.A.R. declined to change the assessment finding that Petitioner “ concedes that current assessment is representative of fair market value “[15].

Petitioner’s Argument

The Petitioner claims that the subject property’s assessed value of $217,800 was improperly arrived at because “ Said increase in the assessment to $217,800 was based on the assessor’s determination of the current market value of the property, rather than a determination of the contributory value added by the improvements “[16]. According to Petitioner the Assessor was only “ allowed to increase assessments on improved parcels by the contributory value of the improvement (and) the assessment should be reduced to reflect the land assessment ($36,400) plus the

assessment of the contributory value of the improvements made "[17] which should be determined by this Court at a hearing. The Petitioner concludes that " Reassessing newly constructed properties to full market value based on sales prices (whether determined by its own selling price, or the price of other properties in the neighborhood) results in a denial of equal protection...as assessments are placed on such properties based on current market valuations, creating assessments which are higher on these properties than older houses of similar market value "[18].

Assessor's Attempt To Recapture Value

The Petitioner suggests that the Assessor's reason for overassessing the subject property's improvements is because he is unable to increase the land assessment. " The improvement assessment for my property improperly and illegally includes an increase in market value which is not attributable to the improvements, but is, in fact, attributable to the land, in an attempt to recapture value with the improved property that which is not reflected because of the underassessment of the land "[19].

Assessor Has No Comprehensive Plan

The Petitioner also asserts that the Town of Bedford " does not have a comprehensive plan for revaluing properties to their market values "[20].

Respondents' Position

The Respondent Assessor, Thomas Polzella [" the Assessor "], explains that after the " Petitioner and her husband constructed a new residence on (the subject property he) reassessed the property on account of its conversion from an unimproved to an improved state "[21] assigning " the figure of $181,400.00 as the improvement component of the property's assessed valuation and added this to the existing $36,400.00 assessment. The net result was the $217,800.00 assessment challenged by Petitioner "[22].

The Process Used By The Assessor

Before Petitioner and her husband constructed their new home in 2004 the subject property was vacant land assessed at $36,400 by reference to a table of land values created at the time of the last revaluation in the Town of Bedford in 1974. The table " includes a series of value figures for different classes and types of

property. Properties are classified by zoning designation and other special characteristics and, in turn, a value is specified for each type of property on a per acre basis.“[23] This table has remained “ unchanged and in use “ since 1974 ” in order to maintain equity between and among the land component of assessments for properties within the Town of Bedford “[24].

Assessing The Petitioner’s New Home

When the Petitioner and her husband built their new home the subject property was “ converted from raw land to an improved state (bringing about) a fundamental change in its character...and value (requiring) a new assessment “[25]. During the building process the Assessor conducted “ multiple inspections of the property...Took measurements, observed the physical extent of the construction; evaluated the quality of such construction; estimated the cost of materials and labor related to the improvements; and estimated the price of said improvements. Relying upon (his) knowledge and experience (he) performed a series of computations as to multiple components of the improvements (relying upon) the 1974 Appraisal Manual prepared by Cole, Layer & Trumble that performed the 1974 revaluation for the Town of Bedford “[26] The Assessors’ computations were set forth on the subject property’s

assessment card[27] and " resulted in an improvement component of the total assessment of $193,000 ".

Sale Prices Of Similar Properties

At this point in the assessment process the Assessor " took into account-in a partial, but not exclusive fashion-the sales prices of similarly situated properties within the Town of Bedford (including the recent sale of) the home next door to Petitioner's property (which had) sold for $1,980,000...because of (his) overriding obligation to determine the true, full market value of the property and, thereafter, to apply a uniform assessment ratio to this value to produce an appropriate assessed valuation "[28].

The Final Assessment

" At the conclusion of this process (the Assessor) assigned the figure of $181,400 as the improvement component of the property's assessed valuation and added this to the existing $36,400 assessment. The net result was the $217,800 assessment (for the subject property) "[29].

Applying The 2004 R.A.R. & E.R.

The New York State Office of Real Property Services [" OPRS "] determined that the Residential Assessment Ratio [" R.A.R. "] and Equalization Rate [" E.R. "] for 2004 for the Town of Bedford would be 10.78% [R.A.R.] and 10.91% [E.R.]. The E.R. and R.A.R. " translate an assessed value into a market value (or, conversely, a market value into an assessed value) so that an assessment can be evaluated for fairness "[30]. Applying the 2004 R.A.R. of 10.78% to Petitioner's own estimate of the full market value of her home at $2,020,408[31] yields the same assessed value derived by the Assessor of $217,800. Applying the 2004 E.R. of 10.91% to the $217,800 assessment yields " a full market value of $1,996,333.60 " which is below that affirmed by Petitioner as true "[32].

Respondents' Arguments

The Assessor asserts that the Petitioner's challenge is " directed strictly at the improvement portion of the 2004 assessment. She argues that the only issue presented is ' the value of the improvements '; seeks a ruling that I could only ascribe the ' contributory value added by the improvements ' to the existing (pre-2004) assessment; and requests a hearing solely on the issue of ' the value of the improvements ' "[33].

R.P.T.L. Article 7 Challenges Total Assessments

The Assessor claims that the Petitioner's piecemeal challenge to the improvements component of the 2004 assessment is wrong as a matter of law, that Real Property Tax Law [" R.P.T.L.] § 502(3) " mandates that only the total assessment (here, $217,800.00, as opposed to the $36,400.00 and $181,400.00 figures) may be challenged in an Article 7 tax certiorari proceeding "[34].

The Assessment Must Be Treated As A Whole

The Assessor asserts that the components of an assessment, land and improvements, are " two interrelated segments (which) cannot be so neatly separated from one another...form a tightly interwoven whole, and to treat them in a stand-alone, segregated fashion is to invite a distorted assessment that is not reflective of a property's value on an equalized basis...By attacking the improvement component of her assessment, Petitioner clearly seeks to obtain a total assessment that is at odds with the true value of her property "[35].

Strangers Welcome In Bedford

The Assessor denies utilizing the " welcome stranger " doctrine [also known as " selective reassessment " (see below)] which he defines as follows: "' Welcome stranger ' assessment occurs when a tax lot is either reflexively reassessed after it is conveyed based upon the sale price obtained for the property or when the assessment on an already improved lot is inordinately increased to a recent sales price level based upon alterations or modifications (such as a new kitchen, refinished basement, a room addition and the like)...I did not reassess Petitioner's property based solely upon a recent sale, not did I seize upon a new bathroom, or kitchen or similar alteration to an existing improvement as the justification for the increase of an assessment to recent sale price levels while leaving the assessment for other improved properties unchanged. Here, I was setting an assessment based upon the change of property from an unimproved to an improved state. This basic, core alteration of the property, and the necessity of ascertaining market value in order to set a proper assessment, led to (his) consideration of sales prices for similarly situated homes...(To) disregard... sales price information would impair anyone's ability to gauge the value of newly improved property "[36].

Fair & Equitable Assessments In Bedford

The Assessor asserts that " Petitioner suggests that her newly constructed property has been inequitably assessed on a discriminatory basis (but) has offered no evidence to prove this "[37]. The Assessor further asserts that the application of the 2004 R.A.R. of 10.78% to Petitioners' admitted market value of $2,020,408 was fair and equitable as it was for reported sales of improved properties in 2004 and 2005 gathered from lists utilized by ORPS. The Assessor presented two charts of properties sold in 2005[38] and 2004[39] identifying " the year these properties were improved, their assessments, their sale price and the ratio of assessed valuation to sale price. They include sales of homes spread throughout the value and age spectrum (from sale prices in the $400,000.00 to the $3,000,000.00 range and for homes built as long ago as 1893 and as recently as 2004). The ratios shown are all within the range of the 2004 (10.78%) and 2005 (9.78%) RARs. As these further demonstrate, the claimed inequity between newly constructed properties and existing improved properties does not exist "[40].

Petitioner Seeks Unfair Advantage

The Assessor notes that Petitioner's claim in her Complaint

before the B.A.R. that " her property be assessed at 8.58% of full value, notwithstanding the 10.78% RAR applicable within the Town of Bedford in 2004...would...place Petitioner's property on a separate and more favorable, tax footing (to which she) is not entitled ...and the Court should not create one for her "[41].

DISCUSSION

A Reasonable, Fair & Non-Discriminatory Process

The Assessor used standard tables and an Appraisal Manual relied upon by Assessors in the Town of Bedford since 1974 in assessing the subject property at $217,800[42]. The Assessor also considered the sales prices of similarly situated properties within the Town of Bedford including the recent sale price of the home next door[43] and arrived at a full market value of $2,020,408 which agreed with the Petitioner's own estimate of full market value[44]. The Assessor applied an R.A.R. of 10.78% to the full market value to derive an assessed value of $217,800 which corresponded to the assessed value derived from standard tables and an Appraisal Manual. The Assessor applied the same R.A.R uniformly in the Town of Bedford in 2004 and 2005 to a broad spectrum of houses selling for prices between $400,000 and $3,000,000[45].

The Burden Of Proof

The evidence presented by the Respondents [and, conversely, the Petitioner's complete lack of credible evidence and her failure to carry her " heavy (evidentiary) burden " in challenging the 2004 assessment [Krugman v. Board of Assessors of the Village of Atlantic Beach, 141 A.D. 2d 175, 182, 533 N.Y.S. 2d 495 (2d Dept. 1988); Nash v. Assessor of the Town of Southampton, 168 A.D. 2d 102, 108, 571 N.Y.S. 2d 951 (2d Dept. 1991)(" it cannot be said, on the present record, that the Town acted in bad faith...or that the plaintiffs were ' singled out for selective enforcement of tax laws that apply equally to all similarly situated taxpayers '"); Waccabuc Construction Corp. v. Assessor of the Town of Lewisboro, 166 A.D. 2d 523, 525, 560 N.Y.S. 2d 805 (2d Dept. 1990)(failure to meet " heavy burden " of demonstrating that Lewisboro's 1983 assessment roll was improper or illegal ")] demonstrates that the Respondents' actions in using a combination of relevant factors[46], " applied evenhandedly to all similarly situated property within (the Town of Bedford) " [47], including, but not limited to, the prices of similarly situated properties in the Town of Bedford including the recent sale price of the home next door, to assess the subject property in 2004 were fair, reasonable[48] and non-discriminatory.

The Petition Is Dismissed As A Matter Of Law

In addition, and notwithstanding an absence of proof, the Petitioner's R.P.T.L. Article 7 challenge to the subject property's 2004 assessment on the grounds that it attributes too high a figure to the improvement component, i.e., the new home, is without merit as a matter of law for the following reasons.

The Total Assessment Is The Proper Subject Of Judicial Review

First, it is inappropriate within the context of the instant proceeding to selectively challenge the assessment of only one of the component parts [land at $36,400 and improvements at $181,400] of the total assessment of $217,800. R.P.T.L. § 502(3) states, in part, " The assessment roll...shall provide for the entry with respect to each separately assessed parcel of the assessed valuation of the land exclusive of any improvement, the total assessed valuation, and the full value of the parcel...Only the total assessment, however, shall be subject to judicial review provided by article seven of this chapter " [R.P.T.L. § 502(3) (McKinney's 2000)]. This mandate has been held " to prohibit review of either the land or the building assessment separately " [Matter of Shubert Organization, Inc. v. Tax. Comm. of the City of New York, 60 N.Y. 2d 93, 96, n.1, 468 N.Y.S. 2d 594, 595, n.1

(1983)(citing People ex re. Strong v. Hart, 216 N.Y. 513, 519-520, 525 (1916); See also Matter of Connolly v. Board of Assessors of the County of Nassau, 32 A.D. 2d 106, 109, 300 N.Y.S. 2d 192, 196 (2d Dept. 1969)("' any separation of value for land and buildings is purely artificial and hypothetical '...and the Legislature recognized this by providing judicial review of only the total assessment (Real Property Tax Law § 502, subd. 3) "); C.H.O.B. Assoc., Inc. v. Board of Assessors of the City of Nassau, 45 Misc. 2d 184, 193-194, 257 N.Y.S. 2d 31 (Nassau Sup. 1964) (" an improved parcel's actual value relates to the whole and not to the separate ingredients of land and improvements ")].

The Petitioner's challenge of only the improvements component of subject property's 2004 assessment must be rejected as a matter of law.

No Violation Of Equal Protection

Second, the policy of selective reassessment upon which the Petitioner relies[49] in challenging the improvements component of the subject property's 2004 total assessment, simply, does not apply in this case.

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 is well settled that in the area of real property taxation, rough equality, not complete uniformity, is all that is required...It has also been held that ‘ gross disparities ‘ in the taxation of similarly situated taxpayers can constitute a violation of the constitutional right to equal protection of the laws...if a classification between taxpayers is palpably arbitrary or involved an invidious discrimination, an equal protection violation will be found “); Nash v. Assessor of Town of Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 (2d Dept. 1991)(“ a tax classification will only violate constitutional equal protection guarantees ‘ if the distinction between the classes is ‘ palpably arbitrary ‘ or amounts to ‘ invidious discrimination ‘ “)].

Specific Forms Of Selective Reassessment

Selective reassessment takes many forms [none of which apply to this case] and has also been referred to as “ reassessment upon sale “[50] and “ improper assessment “[51].

Reassessment Upon Sale At Market Rate

First, selective reassessment may involve reassessing individual properties at market rate when they are sold [See e.g., Matter of Charles Krugman v. Board of Assessors of the Village of Atlantic Beach, 141 A.D. 2d 175, 184, 533 N.Y.S. 2d 495 (2d Dept. 1988) (" The respondents' practice of selective reassessment of only those properties in the village which were sold during the prior year contravenes statutory and constitutional mandates. In order to achieve uniformity and ensure that each property owner is paying an equitable share of the total tax burden the assessors, at a minimum, were required to review all property on the tax rolls in order to assess the properties at a uniform percentage of their market value. The respondents' disparate treatment of new property owners on the one hand and long term property owners on the other has the effect of permitting property owners who have been longstanding recipients of public amenities to bear the least amount of their cost. We can conceive of no legitimate governmental purpose to be served by perpetuating this differential treatment nor do the respondents suggest any such rational basis in their opposing papers. It would appear that the sole purpose of the different classes is to serve administrative convenience by relieving the village of the burden of conducting a total review of the tax roll and instead permitting a piecemeal approach to reassessments. This approach lacks any rational basis in law and results in invidious discrimination between owners of similarly situated property. Thus, the respondents' method of reassessment

violates the equal protection clause of both the United States Constitution (U.S. Const. 14th amend.) and the New York State Constitution (N.Y. Const., art. I, § 11)"); Matter of Stern v. City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 (2d Dept. 2000)(" However, rather than adding the value of the improvement to the prior assessment...the properties were reassessed to a comparable market value that included the value of the improvement..."); Matter of Feldman v. Assessor of Town of Bedford, 236 A.D. 2d 399, 653 N.Y.S. 2d 28 (2d Dept. 1997)(" The petitioner also claims that the challenged assessment was part of a systematic endeavor by the respondents to reassess only those properties in the town that were sold "); Matter of DeLeonardis v. City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 (2d Dept. 1996)(" Despite the respondents' claim that the Assessor did not rely on the purchase price in determining the assessed value, the Assessor did not submit an affidavit in response to the petitioner's allegation that the Assessor had in fact testified that he did so "); Feigert v. Assessor of the Town of Bedford, 204 A.D. 2d 543, 544, 614 N.Y.S. 2d 200 (2d Dept. 1994)(" The petitioners herein have offered substantial proof that the 1991 assessment of their property is based directly upon the resale of the property in 1983...Accordingly, the Supreme Court properly determined that the 1991 assessment of the petitioners' property was invalid "); Schwaner v. Town of Canangdaigua, 17 A.D. 2d 1068, 1069, 794 N.Y.S. 2d 233 (4th Dept. 2005)(challenge by " recent

purchasers of lakefront or lakeview property (alleging) that the 2002 assessment constituted an improper assessment because property that was recently acquired was assessed with a larger percentage increase than property that had not been recently acquired...the petition sets forth specific examples of gross disparities in the assessed value of allegedly comparable property "); Matter of Reszin Adams v. Welch, 272 A.D. 2d 642, 707 N.Y.S. 2d 691 (3d Dept. 2000)(" The Commissioner...acknowledged that his assessment was merely based on a visual inspection of the exterior of the buildings at issue and a review of the average sales price of homes in the particular neighborhood...respondent's ' selective reassessment ' was not rationally based and therefore was improper "); Matter of Averbach v. Board of Assessors, 176 A.D. 2d 1151, 575 N.Y.S. 2d 964 (3d Dept. 1991)(" CPLR article 78 (proceeding charged that) assessments therein were made pursuant to an illegal ' welcome stranger ' assessment procedure, wherein recently sold property was reassessed at a percentage of its sale price (generally 80%) while similarly situated property was not "); Gray v. Huonker, 305 A.D. 2d 1081, 758 N.Y.S. 2d 731 (4th Dept. 2003)(house purchased in August 2000 for $290,000 " at which time the property had recently been reassessed for $135,000 " as part of city wide reassessment; house subsequently reassessed at $235,000 and found to be " selective reassessment that was not based on a policy ' applied evenhandedly to all similarly situated property within the [jurisdiction] '"); Matter of Markin v. The Town of

Orangetown, 6 Misc. 3d 1042(A) (West. Sup. 2005) at fn 5 (" The factual basis for this assertion consists of...statements in the Kaiser Aff (' When I asked the Assessor why he had increased my 1999 assessment, he told me the reason was that the assessment of the new homes in Peirmont Landing...were being increased due to higher market values...")].

High Coefficients Of Dispersion

Second, a high coefficient of dispersion may be a sign of selective reassessment [See e.g., Waccabuc Construction Corp. v. Assessor of Town of Lewisboro, 166 A.D. 2d 523, 524, 560 N.Y.S. 2d 805 (2d Dept. 1990)(" A high coefficient of dispersion indicates a high degree of variance with respect to the assessment ratios under consideration. A low coefficient of dispersion indicates a low degree of variance. In other words, a low coefficient of dispersion indicates that the parcels under consideration are being assessed at close to an equal rate (see 9 NYCRR 185-4.4) "); Matter of Fred Chasalow v. Board of Assessors, 202 A.D. 2d 499, 500, 609 N.Y.S. 2d 27 (2d Dept. 1994)].

Condominium Conversions

Third, an increase in assessment based solely on the conversion of a 150 residential apartment complex to a condominium may involve selective reassessment [See e.g., Matter of Towne House Village Condominium v. Assessor of the Town of Islip, 200 A.D. 2d 749, 607 N.Y.S. 2d 87 (2d Dept. 1994)(" Such an increase in assessment is prohibited by statute...there was no rational basis in law for reassessing only the subject property ")].

Reassessments Based On More Than Value Of Improvements

Fourth, reassessments based on more than the value of subsequent improvements to an existing structure may involve selective reassessment [See e.g., Matter of Stern v. City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 (2d Dept. 2000) (" reassessment upon improvement is not illegal in and of itself. Here, the petitioners' properties were reassessed after recent improvement. However, rather than adding the value of the improvement to the prior assessment...the properties were reassessed to a comparable market value that included the value of the improvement..."); Matter of Villamena v. City of Mount Vernon, 7 Misc. 3d 1020(A)(West. Sup. 2005)(although the Assessor's reassessment of residential property may have exceeded the actual value of several improvements thus warranting a new inspection and reassessment, " such conduct does not support a finding of '

selective reassessment ‘ “); Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004 (“ Petitioners’ argument, briefly stated, is that the only allowable increase in valuation above the assessment of June 1, 2001 could be one based solely on the addition of the kitchen appliances, which cost $14,513.28. Anything more than this they contend is a ‘ welcome stranger ‘ increase based on the purchase price of $1,175,000.00 paid in April 2002. (There was no town-wide reassessment of all similarly situated properties.). This valuation technique is unconstitutional because it is a selective reassessment which denies equal protection guarantees “); Carter v. The City of Mount Vernon, Index No: 19301/02, J. Rosato, Decision November 25, 2003 (assessment increased 48.9% after sale based upon “‘ certain improvements ‘ having been made to the property, without proper permits, by the prior owner “; assessor failed to “ even identify, or enumerate just what specific renovations or improvements “ were made; assessment held invalid)]. 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[52].

Misapplication Of “ Improvements ” Form Of Selective Reassessment

It is the " improvements " form of selective reassessment which the Petitioner relies upon in challenging the 2004 assessment of her home [" Reassessing newly constructed properties to full market value based on sales prices...results in a denial of equal protection...creating assessments which are higher on these properties than older houses of similar market value "[53]]. Stated, simply, the Petitioner has presented no authority in support of her position since the cases discussing this form of selective reassessment involve pre-existing homes which were assessed upon completion and then selectively reassessed after sale and/or after improvements were made [See e.g., Stern, supra, at 268 A.D. 2d 482 (involved the purchase of " an improved parcel of real property in the City of Rye for $1,445,100 (to which) $180,000 in improvements (were made) "); DeLeonardis, supra, at 226 A.D. 2d 530 (involved the purchase of " a parcel of real property improved by a one-family dwelling in the City of Mount Vernon for $626,000 (upon which) certain improvements (were made) "); Teja, supra (improved property located in the Town of Greenburgh purchased for $1,175,000 to which $14,513.28 in improvements were made); Villamena, supra, at 7 Misc. 3d 1020(A) (the improved property was purchased for $715,000 to which subsequent improvements were made)].

Comprehensive Assessment Plans

In addition, the Petitioner's assertion that " the Town of Bedford does not have any comprehensive plan for revaluing properties to their market values "[54] is inapposite for two reasons. First, the absence of a comprehensive assessment plan has only been the subject of criticism in selective reassessment cases involving, as above, pre-existing homes which were assessed upon completion and then selectively reassessed after sale and/or after improvements were made [See e.g., Villamena, supra (" The Respondents have failed to identify a " comprehensive assessment plan " upon which they relied in raising the assessment of the subject property by $5,100 [see e.g., DeLeonardis, supra, at 226 A.D. 533 (" Furthermore, while assessment upon improvement may be permissible, the respondents have not...alleged that there is in place a comprehensive assessment plan under which all properties will be reassessed, including those on which improvements have been made "); Stern, supra, at 268 A.D. 2d 483 (" Since no comprehensive assessment plan was in place "); Carter, supra (" Moreover even if, arguendo, some or all of the upgrades...constitute ' renovations ' or ' improvements ', the fact remains that respondent has not even suggested, much less made any sort of showing, that the increase in assessment was arrived at by means of applying a comprehensive plan or policy ")"].

Second, 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[55] 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.

Accordingly, for all the foregoing reasons, the Petitioner's Motion is denied in all respects and the Respondents' Cross Motion is granted in all respects.

Dated: White Plains, N.Y.
September 14, 2005

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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 Markin v. Assessor of the Town of Orangetown, 6 Misc. 3d 1042(A)(West. Sup. 2005), Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)(West. Sup. 2005) and MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 8 Misc. 3d 1013(A)(West. Sup. 2005). See also Siegel, Reassessment on Sale, New York Law Journal, August 2, 2005, p. 16.

2. See also Stern v. Assessor of the City of Rye, 268 A.D. 2d 482, 483-484, 702 N.Y.S. 2d 482 (2d Dept. 2000)(" the petitioners' properties were reassessed after recent improvements. However, rather than adding the value of the improvements to the prior assessment... the properties were reassessed to a comparable market value that included the value of the improvements...Since no comprehensive assessment plan was in place to reassess the entire tax roll to reflect the comparable market value of all appreciated properties, those properties with recent improvements bore a discriminatory tax burden not imposed on similarly situated properties that had also appreciated, but which had no recent improvements ").

3. Reply Affidavit of Dale Joan Young sworn to July 21, 2005 [" Young Reply Aff. "] at paras. 26, 28 (" I submit that the assessment on my property was determined illegally, as per *Stern* and D*eLeonardis*, supra "), 33 (" the assessment on my property should be reduced to reflect the land assessment plus the assessment of the contributory value of improvements made ") & 40.

4. Affidavit of Thomas Polzella sworn to June 15, 2005 [" Polzella Aff. "] at para. 20 and Ex. A; Respondents' Memorandum of Law at p. 2 [" R. Memo. "].

5. Polzella Aff. at para. 31, Ex. D (" Property owner's estimate of current full market value of property...$2,020,408 "); R. Memo. at p. 2 (" Incredibly, Petitioner has conceded that the estimated full market value of the subject property equals $2,020,408.00-the precise value derived upon an application of the 2004 RAR to the challenged assessment ").

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

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

8. Petitioner's Notice of Motion dated March 19, 2005 [" P. Motion "].

9. Respondents' Notice of Cross-Motion dated June 15, 2005 [" R. Motion "].

10. Polzella Aff. at para. 19, Ex. B (map of the seven lots).

11. Affidavit of Dale Joan Young sworn to Match 19, 2005 [" Young Aff. "] at para. 7(" The assessment on the land portion of the property was and is below the market value thereof (underassessed) "); Polzella Aff. at para. 25 (" Concededly, the use of the values set forth in this table serves to create a proportionately low land to improvement ratio on most total assessments. In fact, I submit that municipalities throughout the County of Westchester (and even New York State) are likely to have land and improvement components of assessments in which the land portion is proportionately low. This, however, does not demonstrate that an assessment is either unequal or overstated ").

12. Young Reply Aff. at para. 9, Ex. A; Polzella Aff. at para. 21, Ex. B.

13. Young Aff. at para. 8 (" The land assessment was unchanged at $36,400 while an assessment on the improvements was placed on the property of $181,400 "); Young Reply Aff. at paras. 8-9 (" An assessment of $217,800 indicates a market value of $2,020,408 at the 2004 Town of Bedford Residential Ratio of 10.78%. This is the approximate market value of my property as of June 1, 2004, as indicated by the sales prices (of) these neighboring houses, which are substantively similar to mine "); Polzella Aff. at para. 29, Ex. C.

14. Polzella Aff. at paras. 29-33.

15. Polzella Aff. at Ex. D.

16. Young Aff. at para. 11.

17. Young Aff. at para. 18; Young Reply Aff. at paras. 33 & 40.

18. Young Reply Aff. at para. 26.

19. Young Reply Aff. at paras. 29-32.

20. Young Reply Aff. at. para. 36.

21. Polzella Aff. at para. 5.

22. Polzella Aff. at para. 29.

23. Polzella Aff. at paras. 22-25. The actual calculations for the subject property as 4.946 acres of vacant, unimproved land appear at para. 23 (" With respect to R-4A zoned lands, the table sets forth a figure of $8,500.00 per acre. Four acres of Petitioner's property (which again, are zoned R-4A) were assigned this value. The remaining .946 acre portion of the property constituted a residual component beyond the four acre zoned building lot for which the table set forth an excess value of $2,550.00. The two figures taken from the table ($8,500.00 x 4 = $34,000.00 + $2,550.00 = $36,550.00) were combined, rounded and slightly adjusted. This yielded the pre-2004 $36,400.00 assessment of the property ").

24. Polzella Aff. at para. 24.

25. Polzella Aff. at para. 26.

26. Polzella Aff. at para. 27. (" I assigned assessed value figures for the following: (a) $71,540.00 for base price; (b) $3,650.00 for heating and air conditioning; © $6,900.00 for plumbing; and (d) $1,440.00 for additions. These figures, all told, yielded a base figure of $96,490.00. I then applied a ' grade factor ' of 2.00 to this base figure. This ' grade factor ' is a multiplier, applied in an exercise of my judgment and discretion, to take into account the relative condition and quality of the construction. Standard assessment practices and the 1974 Appraisal Manual, called for the application of this ' grade factor '").

27. Polzella Aff. at Ex. C.

28. Polzella Aff. at para. 28.

29. Polzella Aff. at para. 29.

30. Polzella Aff. at para. 9-15.

31. Polzella Aff. at para. 31, Ex. D.

32. Polzella Aff. at para. 31.

33. Polzella Aff. at para. 35.

34. Polzella Aff. at para. 35.

35. Polzella Aff. at paras. 36, 38.

36. Polzella Aff. at paras. 39-43.

37. Polzella Aff. at para. 45.

38.

2005 RAR (9.78%)					
SBL	**Sale Date**	**Assessment**	**Sale Price**	**Year Built**	**Ratio**
60.17-2-30	04/01/2004	$40,100.00	$405,000.00	1935	9.80
60.15-1-14	11/01/2003	$42,900.00	$427,500.00	1955	10.04
60.14-4-4	12/01/2003	$48,500.00	$495,000.00	1893	9.80
49.14-2-44	12/01/2003	$48,500.00	$499,000.00	1954	9.72
49.14-2-33	03/01/2004	$49,000.00	$500,000.00	1954	9.80
72.5-1-24	04/01/2004	$52,300.00	$535,000.00	1956	9.78
95.6-2-7	07/01/2004	$73,200.00	$737,500.00	1973	9.93
39.17-1-10	07/01/2004	$90,000.00	$912,500.00	1979	9.86
50.13-1-4	12/01/2003	$97,300.00	$975,000.00	1964	9.98
49.13-2-1-	09/01/2003	$116,000.00	$1,175,000.00	1999	9.87
83.15-1-5.1	11/01/2003	$117,000.00	$1,200,000.00	2002	9.75
62.13-1-15	07/01/2004	$123,000.00	$1,270,000.00	1986	9.69
59.18-1-8	12/01/2003	$140,000.00	$1,395,000.00	1986	10.04
72.9-1-6	09/01/2004	$132,500.00	$1,410,000.00	1976	9.40
49.14-1-4.3	05/01/2004	$171,900.00	$1,775,000.00	1999	9.80
72.7-1-7	04/01/2002	$203,000.00	$1,830,000.00	2001	10.64
72.7-1-7	05/01/2005	$203,000.00	$2,030,000.00	2001	10.00
50.16-1-4	09/01/2004	$220,000.00	$2,175,000.00	1978	10.11
83.5-1-4	09/01/2003	$218,400.00	$2,228,600.00	2003	9.80
72.17-3-9	01/01/2004	$276,300.00	$2,750,000.00	2001	10.05
61.6-1-8	03/01/2004	$285,000.00	$2,950,000.00	1950	9.70
74.6-1-7.9	08/01/2004	$299,100.00	$2,995,000.00	2001	9.99

61.10-2-10	11/01/2004	$312,000.00	$3,155,000.00	2003	9.90
59.19-1-2	08/01/2003	$330,500.00	$3,400,000.00	1989	9.72
72.10-1-2	04/01/2004	$349,800.00	$3,500,000.00	1903	9.99

39.

2004 RAR (10.78%)					
SBL	**Sale Date**	**Assessment**	**Sale Price**	**Year Built**	**Ratio**
84.12-2-7	01/01/2003	$40,600.00	$375,000.00	1940	10.83
60.10-3-58	10/01/2002	$45,200.00	$425,000.00	1951	10.64
60.6-2-52	01/01/2003	$46,300.00	$425,000.00	1949	10.89
60.10-3-7	10/01/2002	$53,400.00	$492,500.00	1966	10.84
49.10-2-5	01/01/2003	$55,000.00	$510,000.00	1989	10.78
85.6-4-8	12/01/2002	$81,400.00	$755,000.00	1964	10.78
49.15-4-80	10/01/2002	$85,600.00	$800,000.00	1900	10.70
61.14-1-10	07/01/2003	$95,100.00	$888,000.00	1970	10.71
72.13-1-13	12/01/2002	$102,400.00	$935,000.00	1979	10.95
85.6-5-21	02/01/2003	$107,900.00	$995,000.00	1972	10.84
61.16-1-19	09/01/2002	$128,900.00	$1,212,500.00	1979	10.63
49.14-1-4.2	07/01/2003	$173,000.00	$1,575,000.00	2000	10.98
83.8-1-2	01/01/2003	$178,600.00	$1,685,000.00	1900	10.60
73.10-1-8	07/01/2003	$221,600.00	$2,105,000.00	1992	10.53
74,5-1-1	09/01/2004	$236,600.00	$2,175,000.00	1996	10.88
50.16-1-4	09/01/2004	$220,000.00	$2,175,000.00	1981	10.10
72.12-1-11	05/01/2005	$243,300.00	$2,275,000.00	1999	10.70
50.6-1-5	04/01/2004	$261,800.00	$2,395,000.00	2001	10.90

84.17-1-2.4	06/01/2003	$262,100.00	$2,400,000.00	1997	10.92
84.17-1-2.9	12/01/2002	$260,000.00	$2,400,000.00	2001	10.83
72.17-3-9	12/01/2003	$276,300.00	$2,750,000.00	2001	10.10
72.7-1-9	06/01/2004	$217,800.00	$2,020,000.00	2004	10.78

40. Polzella Aff. at paras. 46-47.

41. Polzella Aff. at para. 48.

42. Polzella Aff. at paras. 24-27.

43. Polzella Aff. at para. 28.

44. Polzella Aff. at Ex. D.

45. Polzella Aff. at paras. 45-47

46. Polzella Aff. at pars. 22-27.

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

48. See e.g., MGD Holding Hav, LLC v. The Assessor of the Town of Haverstraw, 8 Misc. 3d 1013(A) (" Nonetheless the Respondents

have provided a facially reasonable explanation that meets the threshold recommended in 10 ORPS Opinions of Counsel SBRPS 60 (" Instead, whenever an assessor changes the assessments of individual properties or of a particular type of property in a year when the entire roll is not revalued or updated, the assessor must be prepared to explain and justify the changes...the assessor should be prepared to offer proof of his assessment methodology in general so as to successfully withstand any challenge ")].

49. Young Reply Aff. at para. 26.

50. See 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 ").

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

52. Such cases have involved a delay in the implementation of a comprehensive reassessment program [See e.g., Nash v. Assessor of Town of Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 (2d Dept. 1991)(" Whether the delay in the implementation of a comprehensive reassessment of all of the parcels in a taxing jurisdiction can result in equal protection violation...it cannot be said, on the present record, that the Town acted in bad faith...")], the reassessment of 150 waterfront parcels because of " the rapid rate of appreciation of property " [See e.g., Mundinger v. Assessor of the City of Rye, 187 A.D. 2d 594, 590 N.Y.S. 2d 122 (2d Dept. 1992)(" The reassessment program ...would be justified...if waterfront residential property appreciated at a higher rate than nonwaterfront residential property ")], the use of two different methods of assessing Class I property [See e.g., Matter of Fred Chasalow v. Board of Assessors, 176 A.D. 2d 800, 803, 575 N.Y.S. 2d 129 (2d Dept. 1991)(" Indeed, it is well settled that a system of assessment which is challenged on the ground of inequality may nevertheless survive judicial scrutiny if the assessing authority demonstrates that the classification which results in unequal treatment bears a rational relation to the achievement of a legitimate governmental objective ")], the reclassification of Class II property to Class I property [See e.g., Matter of Acorn Ponds v. Board of Assessors, 197 A.D. 2d 620, 621, 603 N.Y.S. 2d 491 (2d Dept. 1993)(" There is no proof in the record that the failure

to reassess all Class I property when the petitioner's property was reassessed resulted in disparate tax treatment of a constitutional dimension ")] and the method of dividing " the Town into four neighborhoods for valuation purposes " [See e.g., Matter of Akerman v. Assessor of Town of Hardenburg, 211 A.D. 2d 916, 917, 621 N.Y.S. 2d 154 (3d Dept. 1995)
(petitioners have not established that the formulas used by respondents were improper or inequitable or that the assessments violate constitutional requirements ")].

53. Young Reply Aff. at para. 26.

54. Young Reply Aff. at para. 36.

55. Polzella Aff. at paras. 22-29, 41-46; Ns. 39, 40.