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,

Respondent(s).

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DECISION/ORDER

Index Nos:
16738/03
16559/04
16530/05

Motion Date:
11/22/06

LaCAVA, J.

945 Forest Avenue - Assessed Value - Newly Created Property [1]

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, 2005	$ 32,500	$ 87,700	$ 120,200

According to respondent assessor, 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.

Respondent assessor 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. She estimated that the home was now completed, and she recorded 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 now-completed property.

The Instant Litigation

Upon being advised of the 2003 assessment, petitioner filed a grievance with the City Board of Assessment Review (respondent, BAR); this grievance was denied and petitioner filed the instant 2003 petition. Petitioner similarly, and with a similar lack of success, grieved the 2004 assessment, and then filed the instant 2004 petition.

The Respective Positions of the Parties

Petitioner now seeks an Order granting summary judgment[2] pursuant to C.P.L.R. § 3212, finding that the subject property was selectively, and thus improperly and unlawfully, assessed by the Respondents. Petitioner argues that any assessment may only take into account the value of new improvements to the subject property citing *Colonie Hill v. Boncore*,87 A.D.2d 581 (2nd Dept. 1982). Petitioner distinguishes *Markim v. Assessor of Orangetown,* 9 Misc.3d(A),(Sup. Ct. Rockland Co. 2005) and 11 Misc.3d 1063(A),(Sup. Ct. Rockland Co. 2006); *MGD Holdings HAV, LLC v. Assessor of Haverstraw,* 11 Misc. 3d 1054(A), (Sup. Ct. Rockland Co. 2006); and *Young v. Town of Bedford,* 9 Misc.3d 1107(A), 808 N.Y.S.2d 921 (Table), 2005 WL 2230399, 2005 N.Y. Slip Op. 51444(U) (Supreme Court, Westchester County, Dickerson, J., 2005), *aff'd* _ N.Y.S.2d ___, 2007 WL 530575, 2007 N.Y. Slip Op. 01580 (2d Dept. 2007), in that each of the cases involved new properties that justified their reassessment above the cost of the new improvements. While the "newly created property" argument may be viable where there has been a complete change to the property itself (such as a new subdivision as in *Young*, or *Markim*, where one existing property is broken into multiple new properties, or a merging of properties to create one new property, such as in *MGD*), here, the property itself was not newly created. It had existed since 1969 on one tax lot, with existing road access, with existing utilities at the street frontage, and with its Long Island Sound waterfront location. The only thing "newly created" was the improvement on the property, the house itself.

Respondents likewise move for summary judgment pursuant to C.P.L.R. § 3212, arguing that this Court's decision in *Young v. Town of Bedford*, *supra,* controls. They argue that the property, during and after construction of the home, should be considered to be newly created property, requiring reassessment at full market value, and not restricted by the costs of the improvements, here, the new house. At the time the house was constructed, the property

was vacant except for a temporary shed valued at $400. The construction of the luxury home, therefore, resulted in a wholesale change in the character, condition, and value of the property, which transformed it from an unimproved state to an improved state starting in 2003 and thereafter.

Thus, while both parties acknowledge that *Young* is pivotal to an analysis of this case, Petitioner argues that Young is distinguishable from the case at bar, while the Respondents urge that it is directly on point and that its principles should control.

Young v. Bedford

In *Young*, Petitioner's husband was a builder who built five large homes on five of the seven lots which he owned. Four of the five homes 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. Petitioner and her husband kept the fifth home as their own, and in 2004 that property was assessed at $217,800. Young argued that this value was improperly arrived at because the 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. The latter, Young asserted, was selective reassessment.

The respondent Town in *Young* argued that the parcel was reassessed due to its conversion from an unimproved to an improved state, by assigning a value of $181,400.00, representing the improvement component of the property's assessed valuation, and adding this to the previous $36,400.00 assessment (as vacant land). The result was the $217,800.00 assessment challenged by Petitioner. Respondent argued that such a reassessment was proper and further urged dismissal as a matter of law since, it was argued, petitioner has sought to challenge only the improved portion of the final assessment.

This Court held that, when the Youngs completed their new home, the property was:

> ...converted from raw land to an improved state (bringing about) a fundamental change in its character ... and value (requiring) a new assessment". 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" FN26 The Assessors' computations were set forth on the subject property's assessment card FN27 and "resulted in an improvement component of the total assessment of $193,000. *Young, supra*, p3.

The Court further found:

> 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. 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 ... *Young, supra*, p3.

However, this Court held in *Young* that the petitioners therein had not been subject to selective reassessment.

> 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)]. *Young, supra*, p9.

Finally, this Court in *Young* addressed respondent's argument that the Petitioner's challenge was directed solely at the improvement portion of the 2004 assessment, holding:

> 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...
>
> ...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 (Supreme Court, Nassau County 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.

In affirming Justice Dickerson, the Second Department held that the petitioner therein improperly challenged only a portion of the assessment, and also failed to establish that the property was selectively reassessed just because it was newly constructed.

The Arguments in Light of *Young*

Respondent argues that *Young* is controlling on the instant matter, but that Petitioner has misinterpreted its holding. Here, like *Young*, an unimproved property was subdivided, and then improved with a residence. The assessor then reassessed the property by consideration of both the nature of construction and the property's market value based on a comparison with similar properties. Per *Young*, this was entirely proper, and thus they are entitled to judgment as a matter of law on petitioner's claims. Similarly, by challenging only the reassessment for improvements, petitioner has, like *Young*, violated RPTL § 502 (3).

Petitioner acknowledges that *Young* is controlling, but argues that the instant property was unlike and, therefore, distinguishable from that in *Young*. The property, which had already been improved with the temporary storage shed, was subdivided when the Senior Carroll gifted the property to petitioner, whereas in *Young* the property was not improved upon at all until after the subdivision. Therefore the property here should not be determined to be newly-created. Thus any reassessment must be based solely on the cost of improvements. Regarding the RPTL 502 (3) issue, petitioner quite properly notes that his petitions set forth challenges to the entire 2003 and 2004 assessments, although in one respect petitioner does claim that the reassessment as it relates to the improved value of the property was not proper.

Summary Judgement Analysis

The Court finds, regarding petitioner's motion, that, at the outset, petitioner has not met the initial burden, and has thus failed to show entitlement to judgment as a matter of law.

This Court, in, *inter alia, Young*, as set forth above, and the Second Department, in its affirmance of *Young*, have held that, while an already improved property may only be reassessed, in the absence of a municipality wide reassessment, based on the cost of improvements made to the property, newly created property, such as that at issue in *Young*, may be reassessed to full market value based upon a variety of factors, including the sales prices of comparable properties.

Here, prior to 2003, the only improvement to the property was a $400 temporary storage shed. Thereafter, a elegant home, built for approximately 1.5 million dollars was constructed on this prime, waterfront property, changing its nature from basically undeveloped property into a luxurious homestead. This was the functional equivalent of new development of an existing undeveloped property. The existence of the $400 utility shed in and of itself did not transform the property to an improved or developed status, which would require that any further improvements trigger the limitation of the assessments to the value of the new improvements. The property herein, like the property in *Young*, was not "already improved", but rather became "newly created" with the addition of the subject residence. As such, it may therefore be reassessed to full market value based upon the factors enumerated above.[3]

Put another way, the seminal or determinative factor in this case is not petitioner's argument that there must be a complete change in the nature of the property itself, such as the new subdivision in *Young*, or the breaking up or merging together of properties as in *Markim* or *MGD*, but rather that a metamorphosis occurred to an existing property whereby it evolved from fallow acreage into a residential waterfront estate.

Regarding respondent's cross-motion, the Court finds that, at the outset, respondent has met the initial burden, by showing entitlement to judgment as a matter of law. However, when viewing petitioner's properly submitted proof in a light most favorable to it, and upon bestowing the benefit of every reasonable inference to it (*Boyce v. Vasquez*, 249 A.D.2d 724, 726 [3d Dept., 1998]), the Court finds that there are material issues of fact to preclude summary judgment as to the tax years at issue here.

While the Court holds herein that the City indeed may properly reassess newly-created or developed property by reference to market value, the precise manner in which the two reassessments occurred here is a matter suitable for resolution at trial. As this Court held in *Markim v. Assessor of Town of Orangetown,* 11 Misc.3d 1063(A), *supra*, under certain circumstances an initial reassessment following construction may properly be viewed as a partial assessment; subsequently, the taxing authority may again reassess upon completion, but not beyond the remaining, unfiled portion of the assessment (*i.e.* to bring the assessment equal to 100% of value), along with the cost of any subsequent improvements. As set forth above, there are indeed questions of fact with respect to the percentage of market value which the 2003 and 2004 reassessments represented, which issues should also be resolved at trial.

Based on the foregoing, it is hereby

ORDERED, that the petitioner's motion for summary judgment pursuant to CPLR 3212 is denied, and it is further

ORDERED, that the respondents' cross-motion for summary judgment pursuant to CPLR 3212 is likewise denied.

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

Dated: White Plains, New York
March , 2007

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

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1.
The Decision/Order herein has been edited for the purpose of publication.

2.
The following papers numbered 1 to 5 were read and considered along with oral argument heard on the record in connection with this motion by petitioner for summary judgment pursuant to CPLR 3212, and respondent's cross motion for the same relief: Notice of Motion, Affirmation, Affidavit and Exhibits, Cross Motion, Affidavit and Exhibits, Memorandum of Law, Affidavit with Exhibits, Memorandum of law.

3.
Also, pursuant to *Young* supra, the instant property was not the subject of selective reassessment.