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

MARIANNE SHOECRAFT and AKA REALTY PARTNERS,

Petitioners,

-against -

TOWN OF NORTH SALEM, A Municipal Corporation, its Assessor or Board of Assessors and Board of Assessment Review,

Respondents.

For a Review under Article 7 of the Real Property Tax Law of the State of New York of the 2005, 2006, 2007 and 2008 assessments of certain real property situated in the respondent Municipal Corporation, located in the County of Westchester, State of New York.
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DECISION/ORDER

Index No:
19463/05
20437/06
21401/07
23126/08

LaCAVA, J.

The trial of this Tax Certiorari Real Property Tax Law (RPTL) Article 7 proceeding, challenging the valuation by the Town of North Salem (Town or respondent) of the real property owned by Marianne Shoecraft, and formerly by AKA realty Partners (Shoecraft or petitioner), for the above tax years, took place before the Court on January 9, January 21, February 18, June 10, and July 14, 2009. The following papers numbered 1 to 2 , were considered in connection with the trial of this matter:

PAPERS	NUMBERED
PETITIONERS POST-TRIAL MEMORANDUM WITH EXHIBITS	1
RESPONDENT'S POST-TRIAL MEMORANDUM	2

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

FINDINGS OF FACT

Petitioner brings the instant action relating to the subject premises, known and designated on the Official Tax Map of the Town of North Salem as Sheet 13, Block 1689, Lot 224; the parcel is also known as 218 Titicus Road, North Salem, New York. Petitioner and her now-deceased husband purchased the instant property in 1999 for $2,250,000.00, when the house, which had been constructed in 1992 but had never been occupied, was in an advanced state of disrepair. The premises at that time included not only the house at issue, but additional undeveloped property amounting to a total of 58.039 acres. In 1999 the then assessor, Kathlyn Stanley, after several challenges to the assessment by the prior owners, and an inspection of the premises in which she observed the advanced decline in the condition of the house, reduced the assessment on the property by nearly 1/3, from $650,000.00 on the 1998 tax roll to $450,000.00 for the 1999 tax roll. The improved value of the property was reduced from $544,450.00 to $270,000.00. This over 50% reduction in improved value (totaling $274,000.00), was, however, offset by a $74,450.00 increase in the land value for that year.

Beginning in 1999, the Shoecrafts performed extensive renovations, repairs, and upgrades to the home and to the property, some of which were undertaken to accommodate Mr. Shoecraft's decline in physical health. Further, in 2000 the property had been subdivided into three parcels. The change, which reduced the subject parcel to 20.851 acres in size, altered the assessment to $333,000.00. In 2001 Stanley, having observed substantial work taking place at the house, increased the improved and total values by $100,000.00. In 2003, the three parcels were re-combined to create two parcels, which now consisted of the subject parcel, totaling 33.8 acres, and another undeveloped parcel (not presently at issue). Due to these subdivisions, and the extensive work conducted on the home, the values of the assessments between 2000 and 2004 varied as follows:

2000	$333,000.00 (improvement value $270,000.00)
2001	$433,000.00 (improvement value $370,000.00)
2002	$433,000.00
2003	$760,750.00 (improvement value $670,000.00, when subject recombined with part of one vacant parcel to constitute 33.8 acres)[1]
2004	$760,750.00

Thus, between 1999 and 2004, Stanley had reduced the assessment by $274,000.00 and the total value by $200,000.00 in 1999, only to raise the assessment and improved value again by $100,000.00 in 2001, and by $300,000.00 in 2003 (if the increase did not result from apportionment). She also increased the total value by $100,000.00 in 2001, and by somewhat over $320,000.00 in 2003 (again, assuming no apportionment).

Subsequently, and again due to the work having been done on and around the house, Stanley changed the assessment of the subject property in 2005, increasing it $101,700.00 (both improved and total values.) Petitioner, for the first time, challenged this assessment pursuant to RPTL Article 7, alleging selective reassessment. Following the filing of the petition, for the first time in many years petitioner also permitted an interior inspection of the premises. During the course of negotiations relating to this petition, and her visit to the premises, Stanley realized that the current assessed value was too high because she had presumed (incorrectly) that the renovation of the garage for residential use (including central air conditioning) was completed. She therefore reduced the assessment $100,000.00 to $671,700.00 (virtually the same as the assessment in 2004). Petitioner, asserting the value was still too high, also grieved tax years 2006 through and including 2008 on the issue of selective reassessment. In 2008, after two years in which the assessment stayed the same, and during continued negotiations[2], Stanley again reduced the assessment to

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[1]. Stanley claims, in her testimony, that the assessment remained at $433,000.00 until 2005, and that the property card reflects only a change in apportionment of the tax assessments between the two combined parcels in 2003, although elsewhere she attributed part of the increase to a partial restoration of the reduction effected in 1999. The card, however, is at best not clear on these issues.

2. Besides the above-mentioned 2005 negotiations, during 2008, prior counsel for petitioner, Joel B. Lieberman, Esq., twice negotiated substantial reductions in the assessments for the years 2005 through and including 2007, the last offer by respondent being in July 2008 for assessments of $530,000.00 for 2005 and 2006, and $450,000.00 for 2007, purportedly amounting to a refund to petitioner of in excess of $250,000.00. However, petitioner rejected this

$600,000.00 ($509,250.00 in improved value), which amounts are nearly 10% less, despite the extensive work conducted, than the 1998 assessment. The assessments in the tax years at issue are thus as follows:

2005	$862,450.00	(improvement value $771,700.00)
2006	$762,450.00	(improvement value $671,700.00)
2007	$762,450.00	(improvement value $671,700.00)
2008	$600,000.00	(improvement value $509,250.00)

which values include the above-mentioned reductions by the assessor in 2006 and 2008.

At trial, Stanley testified about her valuation methodology relating to the subject, and the repairs and renovations conducted thereon. She stated that, upon her view of the premises in 1999 (immediately before it was purchased by petitioner), she observed that the house was in very bad condition, having sustained substantial water damage and other problems. Based on these observations, she reduced the total assessment $200,000.00 (and the improved assessment $274,450.00). She also increased the land assessment by just over $74,000.00, but advised Mr. Shoecraft that, when repairs had been made restoring the house to its prior condition, the assessment would be adjusted to a higher amount.

She also stated that she did increase the assessment by $100,000.00 in 2001 when the property was reapportioned and subdivided into three lots - where it remained until the second subdivision or merger of two of the separated lots occurred. There was considerable work going on in the interior and exterior areas of the house during this period, however, despite requests made to the Shoecrafts, Stanley was not permitted a full inspection of the premises. As a result, she chose to estimate the cost of the work based on the filed building permits. Thus, in 2003, the year of the re-merger of the lots, she increased the assessment by $300,000.00 in improved value, and slightly more in total value, attributable, according to Stanley, at least in part, to the apportionment of the taxes among the new lots. She

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offer, and sought additional assessment reductions; she later terminated Lieberman, and engaged new counsel for the trial of this matter.

also made use of several multiple listings of the property in order to determine what work had been completed up to that point. It remained at those values through 2004, until Stanley, again estimating that permitted work had been done, increased the improved and total values by $101,700.00 for the 2005 tax roll, prompting the first tax year challenge by petitioner. At this time, according to Stanley, petitioner again initially refused a request to visit. However, as set forth above, after the 2005 challenge was filed, and the above-mentioned negotiations were undertaken thereon, Mrs. Shoecraft did acquiesce and allow Stanley to see portions of the premises. From this visit, Stanley determined that her estimate, at least as it related to the garage, was too high and reduced the assessment in 2006 by $100,000.00.

Stanley, described her specific assessment methodology, and stated that, after the Shoecrafts moved in, she heard that work was going on around and inside the house, including at the front entrance portico, an outside porch, and a very large detached garage. Her knowledge and estimation of the nature of the improvements and the work done was based on statements by others who had been to the premises, the real estate listings of the property, her calculations based on cost manuals, and her own estimates of value. She believed, but was not sure, that she had by then begun to estimate the costs of the pool improvements, but had not yet calculated the costs of the garage. She also stated that in 2003 she included the reversal of the reduction that she had given for the deteriorated condition of the premises. She denied increasing the assessment based on the courtyard renovations, but conceded that the upgraded courtyard was included and considered along with the other improvements.

Generally, she stated, her changes in valuations were based on the decrease in assessment in 1999, the promised return of the assessment to the prior figure once the house had been repaired (2003), and increases based on other improvements to the premises. Stanley conceded, however, that none of these calculations, or estimates, are set forth clearly on the property card. In particular, the card failed to record that the increase in 2003 of nearly $330,000.00 in total value (and $300,000.00 in improved value) was specifically based on not only the restoration to the pre-damage assessment value, but also on the improvements, and the lot apportionment, while the increase in 2005 (of $101,700.00) related to the addition of an outdoor pool and pool house. Indeed, she admitted, the card failed to clearly explain the composition and methodology of any of the five changes made from 1998 to 2008, although it can, Stanley argued, be calculated from the information on the card, since the

increases consist of a return to the 1999 value, plus the costs associated with and calculated from the recognized improvements implemented after that date.

At the trial, Maryanne Shoecraft testified at great length about the renovation and restoration of the house and property to its pre-1999 condition, and the extensive improvements, beginning in 1999, which eventually amounted, essentially, to a complete upgrade of the interior of the premises and included significant exterior upgrading. Her petition detailed the following, largely exterior, work:

Work	Cost
Construction of an outdoor patio, and demolition of a room and patio located next to the living room and library	$ 97,353.00
Construction of a front portico and front doors	$ 52,294.00
Construction of Outdoor Barbecue	$ 13,273.00
Roofing	$ 17,500.00
Construction of outdoor pool and backdrop panels	$ 102,888.00
Construction of nine-car garage	$ 147,051.00

totaling $430,359.00. However, Mrs. Shoecraft conceded on extensive cross-examination that the cost figures associated with this work far understated the amount of assessable work conducted. For example, questioning disclosed that the costs contained in the Quick Books accounting for work conducted in the year 2000 alone were $847,750.07. Respondent argues, quite properly, that petitioner failed to produce documents for other years, and that those records would likely show substantial expenditures for those years as well, based on her admission that she declined to include, in her accounting of costs, such categories as labor; stucco work; floor sanding; painting and plastering; railings; electrical work; millwork; blasting; driveway repaving; and even funds paid to petitioner herself for supervision or conduct of some of the work. And she conceded

that she "forgot" to include the cost of electrical work ($86,363.00) and plumbing ($65,391.24), or over $150,000.000, in her petition, nor did she include an additional $220,000.00, representing labor costs ($159,311.10) and the cost of the indoor pool ($66,870.30). To be sure, some of this work would not be assessable, as simple repairs and maintenance; nevertheless, it is clear from Mrs. Shoecraft's own testimony that her assessable costs associated with the work conducted after 1999 clearly exceed that amount claimed in her petition by perhaps as much as $400,000.00, or nearly 100%.

To that end, respondent presented the testimony of Joseph J. Rusciano, an Appraiser with Rusciano Appraisers and Consultants. Rusciano had prepared an appraisal of the following work: the front entry construction; the two-story garage; the outdoor swimming pool; and the barbecue, based solely on the permitting documents submitted to the Town Building Department, since he was unable to arrange a view of the premises. Rusciano concluded reproduction costs and sound values for 2007, as follows:

Work	Reproduction Cost	Sound Value
Construction of an outdoor patio, and demolition of a room and patio located next to the living room and library	-	-
Construction of a front portico and front doors	$166,708.00	$141,702.00
Construction of Outdoor Barbecue	$32,762.00	$ 27,848.00
Roofing	-	-
Construction of outdoor pool and backdrop panels	$166,708.00	$192,463.00
Construction of nine-car garage	$347,812.00	$295,640.00

and total values for the improvements for the years 2005 through 2007 as follows:

Year	Reproduction Cost	Depreciation	Sound Value
2005	$713,030.00	10%	$641,727.00
2006	$737,833.00	12.5%	$645,604.00
2007	$753,708.00	15%	$657,653.00

Respondent also presented testimony from the current assessor, Karen Futia. Futia determined that, in the assessor's file for the subject parcel, there were Multiple Listing Service listings for the subject for various years from approximately 1996 up to 2007. She also testified that from 1999 to the date of trial there was no comprehensive plan to increase valuations based on the equalized cost of improvements to a property in the Town, nor had the Town conducted a Town-wide reassessment during that period. However, according to Futia, she currently visits and inspects, or attempts to visit and inspect, all houses where building permits are taken out for improvements[3]. Futia also described some of the notations on the property card, stating that Stanley recorded a change in improved value in 2001 of $100,000.000 due to what she described as "additions and renovations almost complete". She also indicated that this change related to a building permit issued in 1999 which involved an entrance canopy, a terrace enclosure, and other work to the first and second floors.

3. Notably, Futia's testimony varied somewhat during her examination; she asserted the existence of a plan to increase assessments for exterior construction, and for some interior construction, but also that there is no plan to increase assessments for interior improvements, and that increases for interior work might sometimes follow a large decrease in the assessment. She also could not definitively state whether any plan, if it existed, was consistently followed throughout the Town.

Further, she also noted that the 2003 assessment increase related to the building permits acquired in 2002 for work on the outdoor pool and the barbecue, labeled generally on the card as a remodeling (without specification of the grounds for the amount of increase), as well as to a subdivision or lot line revision. Futia also stated that the increase of $300,000.00 in the improved value was an estimate, due to the lack of a response to an inspection request. Futia testified that the 2005 increase (of $101,700.00) related to a guesthouse and pool; she explained that cost figures derived from the last Town reassessment in 1974 were used to calculate the cost of the work, and that the card showed that the permit for that work included central air conditioning which was eventually not installed. The property card, at page 8, contained calculations for the guesthouse, the garage, air conditioning, terrace, and heated pool, for a total of $101,708.00, which value was adopted as $101,700.00 for the assessment increase for that year. Due to the inability to inspect the premises, however, the assessment increase for this work initially included the planned air conditioning, an amount which was later removed when it was discovered during the late-2005 inspection that the air conditioning had not been installed[4].

CONCLUSIONS OF LAW

Selective Reassessment

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

> Respondents have provided a facially reasonable explanation which appears to be fair and comprehensive, "applied even-

[4]. Respondent also moved, during the trial, to dismiss the earlier (2005 through and including 2007) petitions for lack of standing, based on the ownership of the property during those years by AKA Realty Partners, rather than petitioner. That issue was resolved in petitioner's favor by the Court in *Shoecraft v. Town of North Salem*, 24 Misc3d 1233 (A) (Supreme Court, Westchester County, 2009.)

> handedly to all similarly situated property", for the 2002 change in assessment on the subject property which meets the threshold recommended in *10 ORPS Opinions of Counsel SBRPS 60* ("Instead, whenever an assessor changes the assessments of individual properties or of a particular type of property in a year when the entire roll is not revalued or updated, the assessor must be prepared to explain and justify the changes ... the assessor should be prepared to offer proof of his assessment methodology in general so as to successfully withstand any ... challenge").

In *Bock*, a developer had purchased a parcel for $1,400,000, and then gutted and renovated it before reselling it to the petitioner for $2,995,000. Affidavits attested to the costs in improving the property of approximately $744,000.00, which affidavits differed greatly from affidavits filed with the Town Building Department stating that the cost of the improvements was only $210,000.00. The Town Assessor in the Town/Village of Scarsdale had re-assessed the property upon completion of the aforementioned construction, pursuant to a plan by which she reassessed property in the Town based upon improvements. The plan was described as the Town's "review and reassessment process and procedures", and included her conducting a thorough investigation of all building permits issued in the Town. After eliminating properties and building permits that did not warrant a change in assessment, for reasons including that work under a building permit had not commenced; work under a building permit was modified, canceled, delayed or not yet assessable; or the work involved individual items that are generally not assessed (i.e, fences, walls, roofs, windows, siding), permits where the approved work may result in a change in assessment were then subject to further review and investigation, including, where possible, a site/building inspection of the subject property taken. Any changes in assessments were then based on the equalized fair market cost of the new construction.

The Court, in *Bock*, found:

> The Assessor developed and implemented a reasonable and comprehensive plan for the non-discriminatory reassessment of real property based upon the market cost of improvements determined by referring to all filed building

> permits and conducting an extensive investigation featuring a review of building permit applications, building plans, blue prints, specifications filed with the building department, cost estimates submitted, cost manuals and other documents evidencing cost, rent rolls and income and expense statements, sale and property record card data and, where applicable, a site/building inspection was performed and photographs taken.

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

Similarly, in *Joan Dale Young v. Assessor of the Town of Bedford,* 9 Misc.3d 1107(A) (Supreme Court, Westchester County, 2005), aff'd. 37 A.D.3d 729 (2nd Dept. 2007), the assessor had made use of standard tables and an appraisal manual (which had been relied upon by previous assessors in the Town since 1974) as part of a comprehensive plan for assessing vacant land and newly built homes. The Court found no selective reassessment, since the Town had a comprehensive plan to reassess newly-created properties such as the subject therein. And, in a matter involving, like the case at bar, a reduction in assessment followed by an increase, in *MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw,* 8 Misc.3d 1013(A) (Supreme Court, Rockland County, 2005) the petitioner challenged the assessor's raising the assessment from approximately $720,000 in one tax year to over $1.3 million in the following tax year. In opposition to petitioner's motion for summary judgment, respondent assessor described how he had reduced the assessment to the $720,000 figure in an earlier tax year, to account for a high vacancy rate in this commercial premises, and then had merely returned the assessment to the higher amount in a subsequent year when vacancies had decreased. The Court noted there that the "Respondents have provided an explanation for the increase in assessment ... (which) is facially reasonable").

Markim v. Assessor of the Town of Orangetown, 9 Misc.3d 1115(A) (Supreme Court, Rockland County, 2005) also involved a selective reassessment challenge to a change by an assessor. The Petitioners there were owners of town-house style houses in Paradise Landing, a development located in the Town of Orangetown, Rockland County. The builder completed the subject properties in late 1996 or early 1997, and the subject properties were sold between 1996 and 1998, with some being re-sold soon thereafter. The sale prices of the town houses ranged from $300,000 to

$700,000, and some Petitioners made post-purchase improvements ranging in value from $5,000 to $20,000. The tax year 1997-1998 assessments imposed by the Town Assessor were in the range of $257,900 to $335,000, and the 1999 assessments were in the range of $346,600 to $420,900.

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

This Court has frequently examined municipal re-valuations and found that the assessors' explanations of the changes were either lacking or non existent. In *Carter v. City of Mount Vernon,* Supreme Court, Westchester County, Rosato, J., November 26, 2003, which involved reassessment based on improvements to the property, the Court stated "the respondents do not so much as even identify or enumerate just what specific renovations or improvements they are referring to", in finding selective reassessment by the City. Similarly, in *Villamena v. The City of Mount Vernon,* 7 Misc.3d 1020(A) (Supreme Court, Westchester County, 2005), the Assessor's explanation was that the reassessment of the subject property was based upon a multiple listing, which the Court found to be not only likely to be inaccurate, but a form of selective reassessment similar to reassessment on sale; the Court ordered a new inspection of the premises (to evaluate any improvements) and a reassessment. Finally, the Second Department found selective reassessment, where the Assessor did not submit an affidavit disputing the petitioner's claim that he had relied on the purchase price of a property in arriving at its assessed value, in *DeLeonardis v. Assessor of the City of Mount Vernon,* 226 A.D.2d 530 (2d Dept 1996.)

This Court recently dealt with the comprehensiveness of a reassessment-upon-improvement plan in *Leone v. Town of Cornwall*,

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

This Court held (on a petitioner's motion for Summary Judgment) that the Town failed to demonstrate the existence of triable issues of fact as to the reason for the increase in the assessment on the subject parcel, and whether or not the Town therein was following an equitable, comprehensive, written plan directed to the revaluation of all of the properties in the Town. As noted above, other than to characterize it in a report as an "equalization" change, the Town failed to even mention the increase in petitioner's assessment, much less explain the basis for it. In addition, the assessor's two memos to town officials describing his proposed methodology described the plan in only minimal detail, and even those details involved only regular and intensive review of sales inventory and new construction, while any review of remaining inventory involved only observation from the roadway, not physical inspection of the premises, making equitable treatment for all properties in the Town unlikely. And the two memos seemed to be at odds with one another, as they described the "plan" differently. Indeed, whether the plan was ever even intended to be used for reassessment purposes is in doubt, since the plan was consistently described as an effort to update inventory records, and not for the purposes of reassessment. This Court found that the plan, as variously described, failed at the very least to constitute a comprehensive plan for the reassessment of all similarly-situated properties in the Town, and therefore was selective reassessment.

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

> In opposition, respondent has failed to raise material issues of fact with respect to the change made to petitioner's tax year 2006 assessment, and to the methodology adopted by the Town to review its property inventory. In sum, the respondent assessor has offered varying explanations of who (generally, not he personally) observed what improvements to the premises and when. He asserts specifics about the condition of the building in 2002 (*i.e.* that it was not finished), without support from the property card or any other documents, or, it appears, his own first-hand knowledge, but instead supported by illegible and inexact records of other municipal departments, and the recollections of other persons in his employ. He has offered the explanation that the 2006 reassessment reflects a re-appraisal of the interior condition of the garage, but concedes that it was based **solely** on an observation of some movable appliance attached to or visible from the exterior of the premises, the exact nature of which he does not now recall, and said observation was not made personally but by an inspector in his office. He has asserted that the 2006 reassessment was based on this observation, although he concedes that an inspection of the garage to determine the actual interior condition did not take place for another two years. He asserts that, even though he did not personally observe the exterior condition at all in 2006, he nevertheless increased the assessment over and above that dictated by the inspector who did observe the condition, to an amount that was 60% greater than the 2002 assessment; and he does so without the least explanation of his methodology, or that of his inspector, in determining the amount of the increase to the assessment in 2006.

In sum, the municipal assessor who seeks to reassess

individual properties, rather than the entire tax roll in a municipality, and seeks to do so based on improvements to the premises, 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", and any such reassessment should be conducted pursuant to a comprehensive written plan to insure that any such reassessments are applied even-handedly to all similarly-situated properties.

Tax Year 2005

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

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

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

Finally, at no time did respondent present evidence that Stanley was following an equitable, comprehensive written policy directed to reassessment upon improvement (indeed, her successor denied that such a policy existed during Stanley's tenure.) At no time did she state that any policy, if it existed, was put into writing. Neither was she able to testify to its comprehensiveness; she never stated that **all** similarly situated properties (i.e. all properties for which improvements had been made) were routinely reassessed based on the equalized cost of the improvements, or, for that matter, based on any other cost method. Rather, her testimony was simply that she reassessed on improvements "on all different levels, all different types" in the town, using "cost manuals" or "construction estimates." Furthermore, Stanley conceded that she based her estimates not only on statements of other parties as to conditions at the subject premises, but also on multiple listings, and as noted above in *Villamena, supra*, there is no way to judge the accuracy of such information, except that it is likely to be inaccurate. Thus, according to Stanley's own testimony, she did not provide an explanation and justification of precisely in what manner she arrived at the value of $101,700.00 as an accurate representation of the value of the improvements conducted at the premises; she presented only a vague and confusing description of her general assessment methodology; and she most assuredly presented no evidence that in 2005 she followed an equitable, comprehensive, written policy, for the reassessment of Town properties upon their improvement. Consequently, the $101,700.00 increase in the assessed value in 2005 over the 2004 value of $760,750.00 constitutes a selective reassessment of the subject premises.

Tax Years 2006, 2007, and 2008

On the question of selective reassessment for years subsequent to 2005, the Court is cognizant of the fact that only a $100,000.00 **reduction** in assessed value was made to the premises

in 2006, and no change at all was made to the assessment in 2007. As noted in *Bock*, *supra*, above,

> ...*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").

It is doubtful whether ORPS, and the Courts citing to the ORPS opinion, have intended that such proof be produced and such analysis take place on the occasion of a ***reduction*** in the assessment. In any event, however, the court must conclude that the assessments in 2006 and 2007 are, partially, themselves the product of selective reassessment, because, although the amounts are small, they are the product of the increase in 2005 over the 2004 assessment, which increase was unlawful since, as set forth above, it was a selective assessment. To the extent, then, of the $1,700.00 by which the 2006 and 2007 assessments exceeded the 2004 assessment of $760,750.00, such assessments are likewise unlawful.

Similarly, in 2008 the only action taken by the assessor was to ***reduce*** the assessment an additional $162,450.00. As set forth above, it is unclear the extent to which the assessor must explain, and the Court must examine, a reduction in assessment of 25%, to an assessment value which is over $35,000.00 less than the 1998 value, and when all parties concede that substantial improvements, likely valued at nearly $1,000,000.00, were performed at the premises in the interim, suggesting an increase in assessment due to improvements of at least $100,000.00. Under such circumstances, a substantial reduction in assessed value, in the face of significant improvements to the home, to a value markedly less than that which was in effect in 1998, the Court can only conclude that no unlawful selective reassessment occurred in the lowering of the assessment in 2008.

Valuation

At the behest of the parties, the Court permitted the introduction of a substantial amount of evidence by them as to the assessed values of the subject parcel from 1999 to 2004, beginning with the 1999 reduction in value due to deteriorated

condition/damage, and followed by several increases in those values which were attributed to both a restoration of the reduction for depreciation, and increases occasioned by improvements to the premises. The various petitions are broadly drafted, and arguably claim not only selective reassessment but also errors in valuation. Petitioner, in particular, has argued that the aforementioned increases were improper as in excess of the equalized value of the cost of improvements, leading to erroneous assessed values, in addition to the claimed selective reassessment. Nevertheless, the fact of the matter is that petitioner, for whatever reason, failed to challenge a single reassessment prior to the instant 2005 petition (although it is true that the prior owner had made several challenges prior to 1999, and that a petition was pending in 1999 when petitioner purchased the premises.)

This Court has previously stated:

> the statutory scheme underlying RPTL Article 7 evinces a clear legislative intent that a separate proceeding be timely commenced to challenge each tax assessment for which relief is sought (*see* RPTL 702, 704, 706; *see also* 22 NYCRR 202.59[d][2])

MRE Realty v. Town of Greenburgh, 8 Misc.3d 1027 (A) (Supreme Court, Westchester County, 2005, aff'd 33 AD3d 802 (2nd Dept. 2006). Indeed, RPTL §706 is abundantly clear--any and every petition for reviewing an assessment pursuant to RPTL Article 7:

> must show that a complaint was made in due time to the proper officers to correct such assessment.
> RPTL §706(2).

As the Court held in *Fifth Ave. Office Ctr. Co. v. City of Mount Vernon*, 219 A.D.2d 405, 407 (2nd Dept. 1996), rev'd on other grounds 89 N.Y.2d 735 (1996),

> ...the Legislature has imposed detailed requirements on the assessors to conduct an orderly assessment process and specific conditions on the procedure by which aggrieved taxpayers obtain administrative and judicial relief....

The Court in *Fifth Ave*. also cited to *Sterling Estates, Inc. v.*

Board of Assessors, 66 N.Y.2d 122, 124-25 (1985), which stated:

> The responsibility rests upon the assessors to investigate and establish a proper roll, but once it is complete it is presumed to be accurate and free of error. If the taxpayer contends otherwise, the burden is upon him to explain why his property is unfairly valued so that corrections can be made. The review and adjustment process, if adjustment is appropriate, permits the assessors to close the tax roll and establish the tax rate with some confidence that the revenues produced by the levy will be sufficient to meet budget requirements".

The Court then went on

> Holding that participation in the administrative review process was a condition precedent to judicial review, the [*Sterling Estates]* Court observed:
>
> > Manifestly, this administrative review procedure is not intended to be an idle exercise. It is designed to seriously address claimed inequities and adjust them amicably if it is possible to do so. If the procedure is to work at all, and it is important that it should to limit litigation in these post-Hellerstein days of widespread revaluation *(see, Matter of Hellerstein v Assessor of Town of Islip,* 37 N.Y.2d 1, 371 N.Y.S.2d 388, 332 N.E.2d 279), it is essential that sufficient facts detailing the taxpayer's complaint be presented to the assessors so that realistic efforts at adjustment can be made.
>
> > Because of the important purposes to be served by administrative review, the Legislature has specified that protest is a

> condition precedent to a proceeding under Real Property Tax Law article 7 by providing that a petition seeking review "must show that a complaint was made in due time to the proper officers to correct such assessment" (Real Property Tax Law §706 [2]). Failure to comply with that requirement requires dismissal of the aggrieved taxpayer's petition" *(Matter of Sterling Estates v Board of Assessors, supra,* at 125-126).

Consequently, while petitioner forcefully argues the inequitable nature of the several increases prior to 2005, she cannot seek direct redress for either the claimed selective reassessments, or the errors in valuation, during that period, because, quite simply, petitions challenging those reassessments are not before the Court, and there is no evidence that timely challenges to those assessments were made.

Furthermore, if petitioner expects this Court to permit evidence of alleged unlawful reassessments prior to 2004, to collaterally attack the 2004 value, to which value amount (due to the above-found selective reassessment in 2005) the 2005, 2006, and 2007 assessments must be reduced, the Court is likewise precluded from entertaining such a challenge on valuation for the tax years at issue. While petitioner may arguably have sought, in her petitions, redress for excessive valuation in the tax years at issue, she neither filed an appraisal report by an expert challenging the assessor's valuation for any such year, nor did counsel for petitioner seek, prior to trial, leave to assert such a claim[5].

Ultimately, at trial, petitioner did not present, or seek to present, expert proof from an appraiser of the underlying value of the premises, to which amount could be added, again through expert

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5. Petitioner arguably, as indicated above, need not have moved to amend the petition to add allegations of improper valuation, since, while the thrust of the petition alleges selective assessment, it does in passing assert valuation inequities related to repair reassessments. However, petitioner could not and can not properly challenge the valuation of the subject property without, prior to trial, having served and filed an appraisal, or without seeking, at trial, leave to submit an untimely appraisal, either arguing "extraordinary circumstances", or demonstrating good cause, for the latter. *See SKM Enterprises v. Town of Monroe*, 2 Misc3d 1004 (A) (Supreme Court, Orange County, 2004).

testimony, the value of the equalized improvements performed at the premises (derived from their true value and the then-current equalization rate.) Thus, irrespective of the fact that the petitions may arguably have plead errors in valuation; that evidence of the pre-2005 assessed values was permitted at trial; and that extensive (although not complete, due to petitioner's failure to produce thorough records thereof) proof relating to the values of repairs during that period to the premises, were also introduced during the trial, due to the absence of petitions for the years prior to 2005, and the lack of an appraisal and expert testimony by petitioner as to proper valuation of the property, the Court may only consider whether or not the respondent selectively reassessed the property in the tax years at issue. Accordingly, the Court has not considered any allegations by petitioner of valuation errors by respondent for the years prior to 2005.

The Court finally notes, as set forth in footnote #4 above, that the issue of whether petitioner has standing to challenge the earlier years, was resolved by the Court in 2009. To the extent that respondent, in its papers, seeks to persuade the Court again that petitioner does not have standing, such issue cannot be raised in a Post-Trial Memo, but should have been (and previously was) the subject of a formal motion to dismiss, or a motion to reargue the 2009 Decision and Order.

CONCLUSION

The Petitions, with costs [R.P.T.L. §722(1)], are sustained to the extent indicated above (*i.e.*, that the assessments for the tax years 2005, 2006, and 2007 should not have exceeded the 2004 value of $760,750.00). The assessment rolls are to be corrected accordingly by the assessor, and any overpayments of taxes are to be refunded with interest.

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

Submit Judgment on notice.

Dated: White Plains, New York
November 15, 2010

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

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