

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

**FILED AND  
ENTERED ON**  

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**ROCKLAND  
COUNTY CLERK**

-----X  
In the Matter of the Application of  
AKW HOLDINGS LLC, Petitioner, for a  
final judgment Pursuant to Article 78  
of the Civil Practice Laws and Rules  
reversing and setting aside the  
decision of the Board of Assessment  
Review for the Town of Clarkstown,

Petitioner,

Index No: 5246/03

-against-

DECISION & ORDER

THE ASSESSOR OF THE TOWN OF CLARKSTOWN,  
BOARD OF ASSESSMENT REVIEW FOR THE  
TOWN OF CLARKSTOWN, CLARKSTOWN SCHOOL  
DISTRICT AND TREASURER OF ROCKLAND  
COUNTY, NEW YORK,

Respondents.

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SELECTIVE REASSESSMENT NO: 10: AKW HOLDINGS LLC

In this latest examination of the concept of " selective  
reassessment "<sup>1</sup> this Court is called upon to decide if the  
Respondent Assessor's explanation of how and why she changed the  
assessed value of the subject property in 2003 from \$800,000.00 to

\$1,678,900.00 is true, and, further, was her assessment methodology [ i.e., reassessing properties [ but not within the context of a Town wide revaluation program ] to bring them " in line with the assessed value of other similar properties in the Town of Clarkstown "² ] fair, reasonable and nondiscriminatory [ see e.g., Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, 488 U.S. 336, 344, 109 S. Ct. 633 ( 1989 ) ] or was it a form of the prohibited policy of selective reassessment [ see e.g., Stern v. Assessor of the City of Rye, 268 A.D. 2d 482, 702 N.Y.S. 2d 100 ( 2d Dept. 2000 ); DeLeonardis v. Assessor of the City of Mount Vernon, 226 A.D. 2d 530, 641 N.Y.S. 2d 83 ( 2d Dept. 1996 ); Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115 ( Rockland Sup. 2005 ), mod'd 11 Misc. 2d 1063 ( Rockland Sup. 2006 ); Bock v. Town/Village of Scarsdale, 11 Misc. 3d 1052 ( West. Sup. 2006 ); Young v. The Town of Bedford, 9 Misc. 3d 1107 ( West. Sup. 2005 ); Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004 ].

#### **Article 78 Challenge To Assessor's Methodology**

The Petitioner has properly brought a CPLR Article 78 proceeding<sup>3</sup> challenging the 2003 assessment of the subject property on the grounds that the Assessor's methodology " violates the Equal Protection clause of the United States and New York Constitutions.

Under Welcome Stranger it is impermissible for a municipality to raise the assessment of a property it believes is under assessed unless it reassesses all similar properties. Thus, even if Respondents' contention were accepted as correct, that the subject property was substantially undervalued, the Town had no right to selectively revalue the subject premises under the Welcome Stranger rule unless it was part of a reassessment of the other properties in the Town "4.

#### **Methodology Unfair, Unreasonable & Discriminatory**

Stated, simply, and after a careful review of the Petitioner's Motion pursuant to CPLR 3212 seeking summary judgment and Respondents' Cross Motion also seeking summary judgment<sup>5</sup>, and all papers in support thereof, this Court finds that the Assessor's methodology of bringing the assessed value of properties " **in line with the assessed value of other similar properties in the Town of Clarkstown** ", in the absence of a Town wide revaluation program, is unfair, unreasonable and discriminatory, and was not " applied even-handedly to all similarly situated property "6 unlike the reasonable methodology of the Assessor of the Town/Village of Scarsdale [ See e.g., Bock v. Town/Village of Scarsdale, 11 Misc. 3d 1052 ( West. Sup. 2006 ) ( " 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* [ emphasis added ] 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...Once identified the Assessor would estimate the cost of the improvement based on her training, experience and knowledge of the ` Scarsdale market `. The plan was applied to all building permits [ though some changes were not assessable, e.g, fences, walls, roofs, windows, siding ] and during 2001, for example, of the 418 building permits issued...the assessments on 227 parcels...were changed based on the cost of improvements " ; no selective reassessment found )]7.

#### **A New Assessment Is Ordered**

Because the Assessor selectively reassessed the subject property the 2003 assessment is vacated and the matter remitted for a new assessment which adds only the value of the improvements to the subject property made during the period from when the subject property was first assessed at \$800,000.00 to just prior to the taxable status date of May 1, 2003 [ See e.g., Matter of Villemena v. City of Mount Vernon, 7 Misc. 3d 1029 ( West. Sup. 2005 )( " the

instant matter is remitted back to Respondents for a new assessment for calendar year 2003, which assessment is to be determined by taking the prior ( 2001 ) assessment and adding to same only the value of the improvements to the subject property " )].

### **Factual Background**

The subject property is located at 18 Squadron Boulevard, New City, New York, Tax Map Reference Section 59, Block A, Lot 20.30 and consists of 3.2 acres with a " Butler " type<sup>8</sup> warehouse " building constructed in 1985, and our records indicated a floor area of 52,340 sq. ft. comprised chiefly of indoor tennis courts with a medical imaging company "<sup>9</sup>. " Until approximately 2003, approximately 21,500 square feet of area was used as a tennis court. Now this area is vacant and in poor condition, including severe water damage to the interior due to leaks in the roof. The balance of this space is being rented by Mid-Rockland Imaging, a medical testing and x-ray laboratory "<sup>10</sup> which " has been a tenant in the subject property since 1996 "<sup>11</sup>.

### **AKW Purchases The Subject Property**

On August 6, 2002, AKW Holdings LLC<sup>12</sup>, purchased the adjacent properties of 18 Squadron Boulevard and 20 Squadron Boulevard, New

City for a " total price of \$16,075,000. At the closing the owners assigned a value of \$6,956,000 to 18 Squadron Boulevard and the balance of \$9,044,000 to 20 Squadron Boulevard "13. At the time of purchase the assessed value of 18 Squadron Boulevard was \$800,00014.

### Improvements

The Petitioner asserts, upon information and belief15, that " \$350,000 of improvements were made to this property in or about the year 2000 and approximately \$50,000 of improvements were made to this property in late 2003; these later improvements were made after the town increased the assessed value of the property "16. According to the Respondents " [o]n or about November 17, 2000 ...the Planning Board of the Town of Clarkstown ( approved ) a site plan ( and ) official plat ( submitted by the prior owners of the subject property which ) indicates improvements to be made to the existing office building and parking lot of the subject property "17.

### The April 2003 Interior Inspection

Evidently, no interior inspection was conducted of the subject property by the Respondents until " late March and early April, 2003 ( when ) for the first time since receiving the official plat in November, 2000 ( the Supervising Real Property Appraiser, Mr.

Davies noticed ) substantially increased pedestrian traffic, a filled parking lot, and a new canopy on the outside of the building. These changes warranted an interior inspection ( which ) revealed a good quality medical office of approximately 31,200 square feet and several vacant tennis courts comprising approximately 22,800 square feet. This represented not only an increased gross floor area ( 52,340 sq. ft. to 54,000 sq. ft. ) but a reconfiguration of the interior of the subject building as well <sup>18</sup>.

#### The Assessor's Reassessment Methodology

After the inspection, Respondents concluded that the subject property which had been assessed at a " reasonable " \$800,000.00 as " Warehouse space in the Town of Clarkstown ( which ) is generally assessed at approximately \$12.00 to \$25.00 per sq. ft <sup>19</sup>, " could no longer properly be assessed at a warehouse rate " but must be assessed as " Office space in the Town of Clarkstown ( which ) is generally valued at between \$30.00 to \$60.00 per square foot<sup>20</sup>, with medical offices typically assessed at the higher end of the spectrum. I deliberately valued the subject medical office space at the lower end of the spectrum ( at purely an office space rate ), in an effort to fairly compensate for the ' Butler ' type building as follows:

ASSESSED VALUE

Office Space 31,200 sq. ft. @ \$40.00 per sq. ft. =	\$1,248,000
Tennis Courts 22,800 sq. ft. @ \$12.00 per sq. ft. =	\$273,600
Land ( not changed )	\$157,300

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TOTAL ASSESSED VALUE	\$1,678,900 <sup>"21</sup>
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In Line With Other Commercial Properties?

The Respondents assert that " This new valuation of \$1,678,000 brought the assessment of the subject property into line with other commercial properties in the Town of Clarkstown ( citing six examples<sup>22</sup> of commercial properties within the range of \$22.00 per sq. ft. to \$59.60 per sq. ft )...Accordingly, ' 18 Squadron ' is clearly and unequivocally now assessed in line and uniformly with other commercial offices in the Town of Clarkstown "<sup>23</sup>.

However, the Petitioner points out that the assessment of the subject property is not in line with all other commercial properties in the Town of Clarkstown. " As of 2005, the subject property had an assessed valuation of \$32.08 per square foot ( which was raised from the value of \$15.28 per square foot valuation it had at the time of purchase )...By contrast, we found [ four examples of commercial properties within the range of \$14.24 per sq. ft. to \$34.95 per sq. ft<sup>24</sup> ]...these samplings of properties

show...that the valuations of office spaces in the Town of Clarkstown are not uniform. They are across the board. Therefore, the [ reassessment ] of the subject property by the Town was not for the purpose of bringing the value of the subject property into line with all of the other office spaces in Clarkstown as part of a program making the valuations of such office spaces uniform...it is obvious that many of the office spaces in Clarkstown are assessed at a lower value than the value at which Clarkstown has assessed the subject property "25.

#### Proximity In Time

Petitioner's primary and least persuasive argument is based upon proximity in time. " Respondents' assessment is illegal pursuant to the doctrine known as ' welcome stranger ' which prohibits a municipality from raising an assessment on a property owner on the basis of a recent purchase of property...Respondents doubled the assessed value of ( the subject property ) in its first opportunity ( just nine months ) after Petitioner purchased the property at issue "26.

The Respondents deny raising the assessment on the subject property based upon its sales price<sup>27</sup>. The Assessor further asserts that she " first learned of the transaction on or about May 27, 2003 " and " only learned of ( the value of \$6,956,000 assigned to

the subject property ) on or about June 2, 2003 "28 after the subject property had been tentatively reassessed.

Although the Petitioner challenges the Respondents' credibility<sup>29</sup> it is clear based upon the present record that Petitioner has presented no credible evidence of its assertion " that the increased assessment [ of the subject property ] was a direct response to its recent purchase thereby violating the ' welcome stranger ' rule of selectively reassessing property solely on the basis of its most recent purchase price "<sup>30</sup>

#### DISCUSSION

The Respondents' methodology for reassessing the subject property in 2003 from \$800,000.00 to \$1,678,900.00 has been challenged by the Petitioner on the grounds that it " violates the Equal Protection clause of the United States and New York Constitutions ". Indeed, the Assessor's methodology is a " selective discriminatory assessment methodology "<sup>31</sup> and is prohibited.

#### 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 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 and has also been referred to as " reassessment upon sale "<sup>32</sup> and " improper assessment "<sup>33</sup>.

### **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 [ emphasis added ]. 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... This approach lacks any rational basis in law and results in invidious discrimination between owners of similarly situated property " ); 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 )( " utilizing the recent purchase price as a basis for determining the increase in assessed value of property on which

improvements have been made pursuant to building permits, while similarly situated properties which have not been improved are not subject to reassessment, results in discriminatory treatment of the petitioner by imposing upon him a tax burden not imposed upon owners of similarly situated property " ); 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 " ); Schwaner v. Town of Canandaigua, 17 A.D. 2d 1068, 1069, 794 N.Y.S. 2d 233 ( 4<sup>th</sup> Dept. 2005 )( " 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 )( " 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 )( allegations that " assessments were made pursuant to an illegal ` welcome stranger ` assessment procedure " ); Gray v. Huonker, 305 A.D. 2d 1081, 758 N.Y.S. 2d 731 ( 4<sup>th</sup> Dept. 2003 )( house selectively reassessed " that was not based on a policy ` applied evenhandedly to all similarly situated property within the [ jurisdiction ] ` " ); Matter of Markim v. The Town of Orangetown, 6 Misc. 3d 1042 ( West. Sup. 2005 ), 9 Misc. 3d 1115

( West. Sup. 2005 )( " In 1999, the Assessor, instead of adding the remaining 20% of the 1997 determined market value...together with the value of any improvements, reassessed in 1999 at an ' overall market value ' using an incoherent and inexplicable methodology "; selective reassessment found ) mod'd 11 Misc. 3d 1063(A) ( Rockland Sup. 2006 ); McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 ( West. Sup. 2006 )( " Notwithstanding the assertion that ' The only possible explanation for the excessive 2002 increase is that it constitutes a poorly masked policy of sale chasing ' the Petitioners have failed to present credible evidence sufficient to carry their ' heavy ( evidentiary ) burden ' in challenging the 2002, 2003 and 2004 assessments of the subject property "; selective reassessment not found )].

### **High Coefficients Of Dispersion**

Second, a high coefficient of dispersion<sup>34</sup> may be a sign of selective reassessment<sup>35</sup> [ 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 unit 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 [ R.P.T.L. § 339-y[1][b]; R.P.T.L. 581 ]. Even were the assessor not prohibited from assigning a higher assessment ...there was no rational basis in law for reassessing only the subject property. Such a ` selective reassessment ` is improper as a denial of equal protection guarantees " )].

### **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 ); McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 ( West. Sup. 2006 )( assessor's screening procedure for updating and correcting inventory data with respect to Town of Ossining's 10,100 tax parcels fair, reasonable and non-discriminatory; assessment vacated because of poor execution of screening procedure and reliance on inaccurate MLS listing and 1974 property card and failure to examine 1965 building plans; new assessment ordered; no selective reassessment found ) Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020 ( West. Sup. 2005 )( the " Assessor has explained that the reassessment of the subject property...was based upon a multiple listing..." ); assessment vacated and new inspection ordered because of dispute over value of improvements; no selective reassessment found ); Matter of Bock v. Assessor of the Town/Village of Scarsdale, 11 Misc. 3d 1052 ( West. Sup. 2006 )( assessor presented facially reasonable explanation for changing assessments on real property based upon the cost of improvements which appears to be fair and comprehensive; no selective reassessment found ); Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004; 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 ); Joan Dale Young v. The Town of Bedford, 9 Misc. 3d 1107 ( West. Sup. 2005 )].

### **No Equal Protection Violation Or Remand For Trial**

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. Such cases have involved a delay in the implementation of a comprehensive reassessment program [ See 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 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 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 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 " )], the method of dividing " the Town into four neighborhoods for valuation purposes " [ See 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 " )] and the methodology of partially assessing real property [ See e.g., Matter of MGD Holdings v. Town

of Haverstraw, 8 Misc. 3d 1013 ( West. Sup. 2005 )( motion for summary judgment denied; fact issues to be resolved at trial ), reargument granted 11 Misc. 3d 1054( Rockland Sup. 2006 ); Matter of Markim v. The Town of Orangetown, 11 Misc. 3d 1063 ( Rockland Sup. 2006 )].

### **Two Forms Of Selective Reassessment At Issue**

In challenging the constitutionality of the Respondents' 2003 assessment of the subject property the Petitioner has identified two different forms of selective reassessment.

First, the Petitioner has relied upon the " Reassessment Upon Sale " form of selective reassessment in asserting " that the increased assessment was a direct response to its recent purchase thereby violating the ' welcome stranger ' rule of selectively reassessing property solely on the basis of its most recent purchase price "<sup>36</sup>. As noted above the Respondents have denied using this form of selective reassessment and, further, the Petitioner has presented no credible evidence that Respondents reassessed " solely on the basis " of the recent sale price of the subject property.

Second, the Petitioner has relied upon the " More Than Improvements " form of selective reassessment by asserting that a proper reassessment should be based upon some portion<sup>37</sup> of the cost

or value of improvements to the subject property made before the 2003 reassessment which Petitioner claims, upon information and belief only, to be \$350,000.00<sup>38</sup>. While the Petitioner and Respondents have presented no credible evidence of what improvements were made, when they were made and what they cost it is apparent that the interior of the subject property was changed sometime after approval by " the Planning Board of the Town of Clarkstown ( of a ) a site plan ( and ) official plat ( submitted by the prior owners of the subject property which ) indicates improvements to be made "<sup>39</sup>. It is clear that Respondents did not base their 2003 reassessment upon any improvements to the subject property but relied solely upon a procedure of reassessing some properties [ but not within the context of a Town wide revaluation program ] to bring them " in line with the assessed value of other similar properties in the Town of **Clarkstown** "<sup>40</sup>.

### **The Burden Of Proof**

The Petitioner has presented credible evidence **sufficient** to carry its " heavy ( evidentiary ) burden " in challenging the 2003 assessment of the subject property on equal protection grounds [ 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 )]<sup>41</sup>.

## The Rule In The Second Department

Notwithstanding the Respondents' forthright explanation of their reassessment methodology and rationale [ See 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 " ); Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115 ( Rockland Sup. 2005 )( " [T]he Assessor has failed to explain... his methodology "; selective reassessment found ), mod'd 11 Misc. 3d 1063 ( Rockland Sup. 2006 ); MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 8 Misc. 3d 1013 ( Rockland Sup. 2005 )( " The Respondents have provided an explanation for the increase in assessment...( which ) is facially reasonable " ), reargument granted 11 Misc. 3d 1054 ( Rockland Sup. 2006 )] it is nevertheless unconstitutional since it relies upon an ad hoc piece-meal approach to reassessment which is incapable of being uniformly and fairly implemented<sup>42</sup> or being " applied even-handedly to all similarly situated property "<sup>43</sup>, in the absence of a Town wide revaluation program.

The rule in the Second Department is that, in the absence of a Town wide revaluation program, real property<sup>44</sup> may only be reassessed based upon the value of improvements [ See e.g., Stern v. Assessor of the 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..." ) ; DeLeonardis v. Assessor of the City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 ( 2d Dept. 1996 )( " while assessment upon improvement may be permissible " ); Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115 ( Rockland Sup. 2005 )( " In 1999, the Assessor, instead of adding the remaining 20% of the 1997 determined market value...together with the value of any improvements, reassessed in 1999 at an ' overall market value ' using an incoherent and inexplicable methodology " ) mod'd 11 Misc. 2d 1063 ( Rockland Sup. 2006 ); Bock v. Town/Village of Scarsdale, 11 Misc. 3d 1052 ( West. Sup. 2006 )( " The Assessor has a plan by which she reassesses property in the Town/Village of Scarsdale based upon improvements ( only ) " ); Matter of Villemena v. City of Mount Vernon, 7 Misc. 3d 1029 ( West. Sup. 2005 )( " the instant matter is remitted back to Respondents for a new assessment for

calendar year 2003, which assessment is to be determined by taking the prior ( 2001 ) assessment and adding to same only the value of the improvements to the subject property " ); Young v. The Town of Bedford, 9 Misc. 3d 1107 ( West. Sup. 2005 )( " 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 ` ( does not apply ) to the initial assessment of newly created property on vacant, unimproved land " ); 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. ). Th[e Respondents' ] valuation technique [ of increasing the 2001 assessment beyond the value of improvements made in February of 2002 ] is unconstitutional because it is a selective reassessment which denies equal protection guarantees " )].

### Conclusion

The Petitioner's Article 78 Petition is granted to the extent that the 2003 assessment on the subject property is vacated and the Assessor ordered to conduct a new assessment based only upon the value of the improvements made to the subject property from the date when it was first assessed at \$800,000.00 to just before the taxable status date of May 1, 2003.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, N.Y.  
May 24, 2006

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HON. THOMAS A. DICKERSON  
JUSTICE SUPREME COURT

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**ENDNOTES**

1. This Court has previously examined the policy of selective reassessment in Redhead Properties, L.L.C. v. Town of Wappinger,

2006 WL 1274077 ( Dutchess Sup. 2006 ); McCready v. Assessor of Town of Ossining, 11 Misc. 3d 1086 ( West. Sup. 2006 ); Bock v. Town/Village of Scarsdale, 11 Misc. 3d 1052 ( West. Sup. 2006 ); Markim v. Assessor of the Town of Orangetown, 6 Misc. 3d 1042 ( Rockland Sup. 2005 ), 9 Misc. 3d 1115 ( Rockland Sup. 2005 ), mod'd 11 Misc. 3d 1063 ( Rockland Sup. 2006 ); MGD Holdings Hav. LLC v. Assessor of the Town of Haverstraw, 8 Misc. 3d 1013 ( Rockland Sup. 2005 ), reargument granted 11 Misc. 3d 1054 ( Rockland Sup. 2006 ); Dale Joan Young v. The Town of Bedford, 9 Misc. 3d 1107 ( West. Sup. 2005 ); Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)( West. Sup. 2005 ). See also Dickerson, Real Property Selective Reassessment: Annual Method Best?, New York Law Journal, January 5, 2006, p. 7 and Siegel, Reassessment on Sale, New York Law Journal, August 2, 2005, p. 16.

2. Affidavit of Cathy L. Conklin sworn to March 11, 2005 [ " Conklin Aff. " ] at para. 14. See also: Affidavit of Robert W. Davies, Jr. sworn to March 30, 2005 [ " Davies Aff. " ] at para. 14-15; Respondents' Memorandum of Law dated February 23, 2006 [ " R. Memo. " ] at p. 2 ( " Moreover, the respondents have established that the adjustment was proper and appropriate in bringing the undervalued property to the locally applicable uniform percentage of assessed value " ).

3. See Markim v. Assessor of the Town of Orangetown, 6 Misc. 3d 1042 ( Rockland Sup. 2005 )( " What is the proper remedy available to Petitioners? Must Petitioners proceed by way of R.P.T.L. Article 7 or may they collaterally attack the Assessor's methods by way of a C.P.L.R. Article 78 proceeding?...It is clear that C.P.L.R. Article 78 is available to the Petitioners if they can offer sufficient proof to demonstrate that their challenge to the assessment of the subject real properties in Paradise is based upon the Assessor's reassessment methodology " ).

4. Petitioner's Memorandum of Law in Further Support of Petitioner's Motion for Summary Judgment dated April 28, 2006 [ " P. Memo. II " ] at p. 3.

5. Because this is a CPLR Article 78 proceeding it was procedurally inappropriate for the Petitioner to make a motion pursuant to CPLR 3212 seeking summary judgment and for the Respondents to make a cross motion also seeking summary judgment. Such motions are more properly made within the context of a RPTL Article 7 action.

6. Stern v. Assessor of the City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 ( 2d Dept. 2000 ). See e.g. Affirmation of

Bernard Weinreb dated April 28, 2006 [ " Weinreb Aff. II " ] at para. 4; Petitioner's Memorandum of Law In Further Support Of Petitioner's Motion For Summary Judgment dated April 28, 2006 [ " P. Memo. II " ] at pp.3-5, 8-9.

7. For examples of other reasonable methodologies see the programs developed by the Assessor of the Town of Ossining [ [ McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 ( West. Sup. 2006 ) ( " ( her ) methodology of updating and correcting inventory data with respect to the, approximately, 10,100 tax parcels for which she is responsible is fair, reasonable and non-discriminatory " ); no selective reassessment found ] and the Assessor of the Town of Bedford [ Joan Dale Young v. Assessor of the Town of Bedford, 9 Misc. 3d 1107(A) ( West. Sup. 2005 ) ( " The Assessor used standard tables and an Appraisal Manual relied upon by Assessors in the Town of Bedford since 1974 ...for the purpose of assessing newly created property on vacant, unimproved land...it is clear that the Respondents do have ' comprehensive ' plans for assessing vacant land and newly built homes..." ; no selective reassessment found )].

8. Davies Aff. at p. 3, fn. 2 ( " A ' Butler ' type building is a steel-skinned building with minimal interior finish similar to an airport hangar " ).

9. Davies Aff. at para. 4.

10. Affirmation of Gabriel Alexander dated December 15, 2004 [ " Alexander Aff. " ] at para. 7.

11. Petitioner's Memorandum of Law in Further Support of Petitioner's Motion for Summary Judgment dated April 28, 2006 [ " P. Memo. II " ] at p. 9.

12. The Petitioner, AKW Holdings LLC, made a motion to change the caption from " ALW Holdings LLC " to " AKW Holdings LLC " pursuant to CPLR 3025(b) because of " inadvertent error " [ Weinreb Aff. I at para. 5; Petitioner's Memorandum of Law in Support of Petitioner's Motion for Summary Judgment dated December 15, 2004 [ " P. Memo. I " ] at pp. 5-6 ]. This motion is granted and the caption changed to reflect " AKW Holdings LLC ".

13. Alexander Aff. at para. 3 and Exs. A [ Closing Statement ] and B [ Office of Real Property Services [ " ORPS " ] Sales Web Sale Detail Report for 18 Squadron Boulevard ].

14. Alexander Aff. at para. 4 and Exs. B and C [ ORPS assessment inquiry dated May 27, 2003 ].

15. No documentary evidence was presented by the Petitioner as to what the improvements were, when they were made and the value of the improvements.

16. Alexander Aff. at para. 8.

17. Davies Aff. at para. 7 and Ex. 1 ( Official Plat ). See also Affirmation of Marsha F. Coppersmith dated March 24, 2005 [ " Coppersmith Aff. " ] at para. 6 ( " Petitioner concedes that the building was improved on several occasions. These improvements include an increase in the gross floor area, and an expansion of the existing medical office, which ultimately reconfigured the interior use of the building. The reconfiguration changed the bulk of gross floor area from indoor tennis courts to medical office space " ).

18. Davies Aff. at para. 12.

19. Davies Aff. at para. 5.

20. Conklin Aff. at para. 7 ( " In the Town of Clarkstown, professional office space is assessed at \$30.00 - \$60.00 per square foot, and medical office space is assessed at \$50.00 - \$60.00 per square foot " ).

21. Davies Aff. at para. 13.

22. Davies Aff. at para. 14. The Respondents' six properties are

(1) 20 Squadron Boulevard, New City, N.Y. ( adjacent property ) high rise professional office building ( non-medical office ) assessed at \$40.28 per sq. ft.,

(2) 2 Medical Park Drive, West Nyack, N.Y. ( professional and medical ) brand new building complex 50% completed assessed at \$59.60 per sq. ft.,

(3) 301 N. Main St., New City, N.Y. professional office building and some medical offices assessed at \$51.08 per sq. ft.,

(4) 259 Middletown Road, Nanuet, N.Y., restaurant converted into busy pediatric medical office assessed at \$50.00 per sq. ft.,

(5) 65 Western Highway, W. Nyack, N.Y. ( "Butler" Building )

brand new building used as warehouse assessed at \$22.00 per sq. ft.,

(6) 261 W. Nyack Rd., West Nyack, N.Y. , new one story office building ( non medical ) assessed at \$50.00 per sq. ft.

23. Davies Aff. at paras. 14-15. See also Conklin Aff. at para. 14 ( " The assessed value of the subject property at \$1,678,900 brings the property in line with the assessed value of other similar properties in the Town of Clarkstown " ).

24. Affirmation of Bernard Weinreb dated April 28, 2006 [ " Weinreb Aff. II " ] at para. 4 & Ex. 1; R. Memo. II at p. 4. The Petitioner's four properties are

- (1) 450 West Nyack Road, W. Nyack, \$14.24,
- (2) 2 New Hempstead Road, New City, \$31.53,
- (3) 17 Squadron Blvd., Ramsey, N.J., \$34.95,
- (4) 222 North Main Street, New City, \$15.42

25. P. Memo. II at p. 2.

26. Weinreb Aff. I at para. 3. See also: Alexander Aff. at para. 5; P. Memo. I at p. 4; P. Memo II at pp. 5-8, 9-10.

27. Conklin Aff. at paras. 5-13 ( " Petitioner's misguided argument assumes that our office had knowledge of the value assigned to the subject property at the time of its sale and revalued the property based on this alleged knowledge...This assumption is clearly and unequivocally false and our records support our contention...Mr. Sokol scheduled an appointment to meet with me on June 2, 2003, concerning the subject property. At the meeting I stated that the transaction was reflected in our records as a \$10.00 transfer of title only, and further stated that I was unaware of any sale...I had no knowledge that at the time of the sale-at the closing-that the parties to this transaction assigned a value of \$6,956,000 to the subject property...I have never engaged in the practice colloquially termed as ' welcome stranger '-selectively reassessing only those properties which were the subject of recent sales...Moreover, if I had assessed the subject property based upon the ' Welcome Stranger ' methodology, the resulting assessment should have been \$2,608,500 instead of \$1,678,900 " ).

28. Conklin Aff. at para. 12. Affidavit of Susan Sicherman sworn to March 11, 2005 [ " Sicherman Aff. " ] at paras. 4-6 ( " I entered a sale date of August 6, 2002 and a sale price of \$10.00 into our data base...To the best of my knowledge the transaction of August 6, 2002, reflected a transfer of title only, since no transfer tax was recorded by the Rockland County Clerk. My entry to our data base reflects a transfer of title, as well " ).  
Compare P. Memo. II at pp. 6-7 ( " The first page of the deed shows that \$27,824 of transfer tax was paid in connection with the purchase...Further, the Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate ( Exhibit F ) form, shows that \$27,824 of transfer tax was paid " ).

29. P. Memo. II at pp. 5-8.

30. R. Memo. at p. 6.

31. R. Memo. at p. 7.

32. 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 " ).

33. Schwaner v. Town of Cananqdaigua, 17 A.D. 2d 1068, 1069, 794 N.Y.S. 2d 233 ( 4<sup>th</sup> Dept. 2005 ).

34. See ORPS Assessment Equity In New York: Results From The 2004 Market Value Survey, [www.orps.state.ny.us/ref/pubs/cod/2004mvs/reporttext.htm](http://www.orps.state.ny.us/ref/pubs/cod/2004mvs/reporttext.htm) ( " The primary means of measuring assessment uniformity is a statistic known as the coefficient of dispersion (COD). The COD measures the extent to which the assessment ratios from a given roll exhibit dispersion around a midpoint...Assessing units with good assessing practices have low CODs, showing little deviation of individual assessment ratios from the median ratio...Conversely, an assessing unit with little assessment uniformity would have widely varying assessment ratios among the sampled parcels, resulting in high dispersion around the median and, therefore, a high COD. Widely varying ratios result in unequal tax bills for properties of equal value " ).

35. A high COD may also be explained by changing market conditions and the decision not to participate in an annual assessment program. See e.g., Wilkes, A Legal Analysis of Assessment

Practices and Property Tax Equity in the Village of Bronxville, September 12, 2005 ( " An assessor in a community that does not regularly revalue might with all good intention seek to moderate the amount of assessment increases in an effort to minimize overall dispersion in the assessment roll. Indeed, with a coefficient of dispersion ( COD ) of just under 20%... Bronxville's assessment roll is not egregiously random ( as some Westchester rolls are ) " ) and Eckert, Assessment Practices and Effective Tax Rate Variations in Bronxville, September 8, 2005 ( " While the 19.6% COD may be legally acceptable under New York State case law, our opinion is that the variations in effective tax rates inherent in the Bronxville assessment represent a significant departure from both good assessment practices... " ), both available at [www.villageofbronxville.com](http://www.villageofbronxville.com), Village Assessor tab.

36.R. Memo. at p. 6.

37.The Petitioner asserts " that for each \$1,000 of improvement made to commercial property, the ( assessed ) value of the property would increase by \$500 " [ Affirmation of Bruce Sokol dated November 8, 2004 [ " Sokol Aff. " ] at paras. 4-9 ]. This " method " of valuing improvements seems unreasonable since it is presented " without rational basis or any supporting documentation " [ Davies Aff. at paras. 17-19 ].

38.Sokol Aff. at paras. 5-9; Alexander Aff. at paras. 8-10.

39.Davies Aff. at para. 7 and Ex. 1 ( Official Plat ). See also Affirmation of Marsha F. Coppersmith dated March 24, 2005 [ " Coppersmith Aff. " ] at para. 6 ( " Petitioner concedes that the building was improved on several occasions. These improvements include an increase in the gross floor area, and an expansion of the existing medical office, which ultimately reconfigured the interior use of the building. The reconfiguration changed the bulk of gross floor area from indoor tennis courts to medical office space " ).

40. Conklin Aff. at para. 14. See also: Davies Aff. at para. 14-15 ( " This new valuation of \$1,678,900...Accordingly, ' 18 Squadron ' is clearly and unequivocally now assessed in line and uniformly with other commercial offices in the Town of Clarkstown " ); R. Memo. at p. 2 ( " Moreover, the respondents have established that the adjustment was proper and appropriate in bringing the undervalued property to the locally applicable uniform percentage of assessed value " ).

41. **Compare:** 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 " ).

42. **See Ns. 22 & 24 and the text to which they refer.**

43. Stern v. Assessor of the City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 ( 2d Dept. 2000 ). See e.g. Affirmation of Bernard Weinreb dated April 28, 2006 [ " Weinreb Aff. II " ] at para. 4; Petitioner's Memorandum of Law In Further Support Of Petitioner's Motion For Summary Judgment dated April 28, 2006 [ " P. Memo. II " ] at pp.3-5, 8-9.

44. This rule does not apply to the initial assessment of newly created property on vacant, unimproved land [ See e.g., Markim v. Assessor of the Town of Orangetown, 11 Misc. 3d 1063 ( Rockland Sup. 2006 )( " Newly created property such as the subject eleven properties may be initially assessed at or near market value [ See e.g., Joan Dale Young v. The Town of Bedford, 2005 WL 2230399 ( West. 2005 ); MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 2006 WL 398305 ( Rockland Sup. 2006 )( " The subject property consists of a newly built apartment complex of nine buildings containing 168 rentable units, a clubhouse and caretaker's residence, all located at 1101-9408 Crystal Hill Drive, Town of Haverstraw... Since the subject property is newly created property it may be assessed, upon its completion, at or close to market " )].