

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**FILED  
AND ENTERED  
ON  
APRIL 26, 2006  
WESTCHESTER  
COUNTY CLERK**

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In the Matter of the Application of  
DAN and FAITH McCREADY,

Petitioners,

**-against-**

Index Nos:  
17160/02  
16812/03  
15406/04

THE ASSESSOR OF THE TOWN OF OSSINING,  
THE BOARD OF REVIEW OF THE TOWN OF  
OSSINING and THE TOWN OF OSSINING,

**DECISION & ORDER**

Respondents,

For a Review under Article 7 of the Real  
Property Tax Law of the State of New York.

-----X

DICKERSON, J.

**SELECTIVE REASSESSMENT NO. 9: LOST AND FOUND**

In this most recent examination of the concept of " selective  
reassessment "<sup>1</sup> this Court is called upon to decide if the Respondent  
Assessor's [ " the Assessor " ] explanation of how and why she changed the  
assessed value on the subject property in 2002 from \$88,000 to \$136,040  
[ " a net change of \$48,040.00 equal to an increase of approximately

54.59% "2 ] is true and, further, was her assessment methodology [ i.e., screening procedure for updating and correcting inventory data with respect to the Town of Ossining's tax parcels ] fair, reasonable and non-discriminatory [ 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 )].

#### **Methodology Fair, Reasonable & Non-Discriminatory**

Stated, simply, and after a trial and a careful review of the excellent post trial memoranda of law submitted by the parties, this Court finds that the Assessor's methodology for 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 and is " applied even-handedly to all similarly situated property "3, and 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 " ) and as discussed in Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115(A) ( Rockland Sup. 2005 )( " [T]he Assessor has failed to explain... his methodology...failed to provide a ' coherent ( numerically based ) explanation of his...assessments of the subject properties "; selective reassessment found ), mod'd 11 Misc. 3d 1063 ( Rockland Sup. 2006 ); 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..." ); no selective reassessment found ); 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...it is clear that the Respondents do have ' comprehensive ' plans for assessing vacant land and newly built homes..." ); no selective reassessment found ); MGD Holdings Hav, LLC v. Assessor of the Town of Haverstraw, 8 Misc. 3d 1013(A)( 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 )].

### A New Assessment Is Ordered

However, while the Assessor did not selectively reassess the subject property, the 2002, 2003 and 2004 assessments challenged herein are vacated, nonetheless, because in preparing the 2002 assessment the Assessor, amongst other things, (1) relied upon an unverified and inaccurate 1999 MLS listing of the subject property, (2) failed to examine the 1965 building plans and the 1967 Property Card of the subject property and (3) relied upon the inaccurate 1974 Property Card which was prepared without an interior inspection and, evidently, without a review of the 1967 Property Card [ See e.g., Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)( West. Sup. 2005 )( " the instant matter is remitted back to Respondents for a new assessment " )].

### History Of Property & Assessments

In 1958 Mr. & Mrs. Thomas Gallo [ " the Gallos " ] purchased a piece of vacant land located at 91 Ridgecrest Road in the Village of Briarcliff Manor and the Town of Ossining for \$16,000<sup>4</sup>. In 1967 the Gallos built<sup>5</sup> a beautiful " contemporary style single family residence " <sup>6</sup> with a Hudson River view reminiscent of " the cape " <sup>7</sup>. The subject property was purchased by the Daniel and Faith Mccready [ " the Petitioners " ] on May 24, 2001 from the Gallos for \$2,250,000<sup>8</sup>.

### The Property Cards

According to the 1967 Property Card<sup>9</sup> the Gallo's home was given a total assessed value of \$85,400 [ \$10,400 land and \$75,000 buildings ]. A new property card was created in 1974<sup>10</sup> to reflect a Town wide revaluation. And in 2005 yet another property card<sup>11</sup> was created after a review of the building plans.

### The 1974 Revaluation

In 1974 the Town of Ossining reassessed<sup>12</sup> the entire Town with data collection beginning in 1972. The reassessment was done " from scratch " in that previous data with respect to the various tax parcels, including Property Cards, was not used<sup>13</sup>. The valuation was conducted by the firm of Cole Layer & Trumbull [ using a manual only a few pages<sup>14</sup> of which were produced at trial ] and new Property Cards<sup>15</sup> were created [ " the 1974 Property Cards " ].

### The 1974 Property Card

Evidently, the Gallos refused to allow the property evaluator from Cole Layer & Trumbull access to measure the interior or exterior of the subject property<sup>16</sup>. As a result the 1974 Property Card reflects conclusions by the property evaluator without benefit of a physical inspection and

actual measurements of the subject property and, evidently, without a review of the 1967 Property Card. For example, the 1967 Property Card states that there are 5 bathrooms with " 3 Fix't " and 1 bathroom with " 2 Fix't " while the 1974 Property Card states that there are 4.0 bathrooms ( 2 " bathrooms " and 2 " toilet rooms " )<sup>17</sup>.

Once a full value was arrived at for all tax parcels, the assessments were set at 50% of full value [ e.g., the subject property's land was assessed at \$18,100, the building at \$78,600 for a total assessment of \$96,700<sup>18</sup> ]. Subsequent entries on the 1974 Property Card indicate a reduction in assessed value in 1978 to \$87,200 [ grade change from " double A to an A + 40 "<sup>19</sup> ], an increase in 1992 to \$87,600 [ \$400 for " greenhouse addition "<sup>20</sup> ] and another increase in 1999 to \$88,000 [ no explanation for change<sup>21</sup> ].

### **The Assessor's Methodology For Updating Inventory**

The Assessor follows a general procedure<sup>22</sup> for updating and correcting inventory data with respect to the, approximately, 10,100 tax parcels for which she is responsible<sup>23</sup>. There are many reasons why an assessment may be changed<sup>24</sup>. The Assessor reviews all sales occurring in the Town of Ossining and relies upon " a procedure of screening all sales as outlined...in the manual of the International Association of Assessing Officers<sup>25</sup>". The Assessor is required to " maintain an inventory on every property

( pursuant to New York State regulations of the ) Office of Real Property Services "26. This screening process enables the Assessor to prepare a ratio study every year27 and enables her to update and correct her inventory of tax parcels. The Assessor " drives every sale "28. With respect to " outliers "29 the Assessor attempts to determine if the sale was arm's length, whether there is a mismatch between what was assessed and what was sold30 and may ask for an interior inspection31. An assessment will be revised only if previously unassessed real property is discovered and only items added or removed are assessed32. In the absence of an inventory issue the Town of Ossining does not change assessments.33

### **The MLS Listing**

Sometime prior to July of 200134 the Assessor received a copy of an MLS listing35 describing the subject property. A comparison of the MLS listing and the 1974 Property Card revealed the following unassessed property, (1) 4,064 square feet of building ( 8500 square feet on the MLS listing compared to 4,436 square feet on the 1974 Property Card )36, (2) 2.2 Baths ( 6.2 ( MLS ) compared to 4.0 ( Property Card ))37, (3) 1 kitchen ( 2 ( MLS ) compared to 1 ( Property Card ))38, (4) Hot Tub ( MLS )39 and (5) Wine Cellar ( MLS )40. The Assessor considered the " disparity between the ( MLS ) listing and the property record card "41 significant enough to warrant an inspection " [t]o update our records and ascertain whether the ratio was correct "42.

### The Letter Requesting An Inspection

On July 13, 2001 the Assessor sent the Petitioners a letter requesting an inspection [ " It is necessary for the assessor's office staff to inspect the interior of the premises in order to update our records "<sup>43</sup> ]. In a conversation with Mr. Mccready the Assessor explained that the prior owner's refusal to allow an inspection<sup>44</sup> during the 1974 Town wide reassessment may have resulted in miscalculations of the actual square footage of the subject property<sup>45</sup>. The Assessor also explained to Mr. Mccready that she would " have to estimate the information, if I can't make an inspection "<sup>46</sup>. The Petitioners refused to allow the Assessor to inspect the interior of the subject property<sup>47</sup>.

### The 2002, 2003 & 2004 Assessments

After being denied access in 2001<sup>48</sup> the Assessor prepared her 2002 assessment of the subject property [ relying upon<sup>49</sup> the MLS Listing, the 1974 Property Card, the Cole Layer & Trumbull 1974 Town wide revaluation pricing sheets<sup>50</sup> and the " \ very same methodology that had been used during the re-valuation in 1972, so as to arrive at the assessment which the assessor would have arrived at at the time had the true facts been known \ "<sup>51</sup> ] by (1) multiplying \$20.00 per square foot<sup>52</sup> times the 4,064 square feet of unassessed area for a total of \$81,280<sup>53</sup>, (2) multiplying \$300.00 per fixture times 16 fixtures in the unassessed " Two plus two half baths " for

a total of \$4,800.00<sup>54</sup>, (3) adding \$5,000.00<sup>55</sup> for an additional kitchen<sup>56</sup>, (4) adding \$3,000.00 for a hot tub<sup>57</sup> and (5) adding \$2,000.00<sup>58</sup> for a wine cellar<sup>59</sup>. Evidently, the Assessor chose not to further increase the assessment by making adjustments " made for Grade, Construction and Design ( ' C&D ' ) and Depreciation in the 1974 Town-wide reassessment, as reflected on ( 1974 Property Card ) "<sup>60</sup>. The total added value of \$96,080.00 was converted to a 1974 assessment of \$48,040.00 ( 50% ) and added to the existing assessment of \$88,000.00 for a total 2002 tentative assessment of \$136,040.00<sup>61</sup> of which the Petitioners were notified<sup>62</sup> and given an opportunity to file a complaint. After the Petitioner's complaint before the Respondent Board of Assessment Review [ " BAR " ] was rejected the subject property was assessed at \$136,040.00 for 2002. This assessment was carried over into 2003 and 2004. The Petitioners filed complaints before the BAR and Real Property Tax Law [ " RPTL " ] petitions regarding the 2002, 2003 and 2004 assessments.

### **The Building Plans Were Not Reviewed**

The building plans<sup>63</sup> of the subject property were created in 1965 and filed with the Village of Briarcliff Manor. The Assessor did not<sup>64</sup> [ but should have<sup>65</sup> ] examined these building plans before calculating the 2002, 2003 and 2004 assessments but instead (1) relied upon the unverified and inaccurate data<sup>66</sup> in the MLS listing (2) failed to examine the 1967 Property Card<sup>67</sup> and (3) relied upon the inaccurate 1974 Property Card.

### The 2005 Property Card

In fact, it was not until on or about August 16, 2005 that Ms. Tammie Fiske, a real estate appraiser employed by the Respondent Town of Ossining, first examined the building plans<sup>68</sup> of the subject property. At the same time the Respondents' Appraiser, Ms. Nanette J. Albanese, pursuant to this Court's Order, inspected the interior of the subject property but did not take complete measurements<sup>69</sup>. After reviewing the building plans<sup>70</sup> [ " It shows a basement walkout level, and then a first and a second ( levels ) with cathedral, high cathedral ceilings "<sup>71</sup> ], Ms. Fiske created the 2005 Property Card<sup>72</sup> which notes (1) a " First Story Area " square footage of 3,963, (2) a " Second Story Area " square footage of 1,113 and (3) a " Finished Basement Area [ Kit, Bath, illegible ] " square footage of 2,100 for a total " Square Foot Of Living Area " of 7,176. The 2005 Property Card also notes " Riverview-A+++ ", " A+ quality of construction + detail. 2 story entrance w/balcony. Terrace RP2-BBQ + Hot tub. Most fixtures are original- However-Higher end quality. Deck size estimated. Information regarding interior obtained from local appraiser hired by Town. Measurements taken from plans ", 2 kitchens one of which is in the basement, 6 ½ + ½ baths, " basement type " as partial, " grade " as AA and a " grade adjustment " of 225.

### Gross Living Areas

There are three levels of the subject property, i.e., First, Second and Lower Level or Basement. Both parties agree that the First and Second Levels are "Gross Living Areas"<sup>73</sup> although they disagree as to the assessable square footage of each Level. As regards the Lower Level or Basement, however, the parties do not agree on whether it can be considered Gross Living Area with Petitioners asserting that it is not<sup>74</sup> and Respondents asserting that it is, at least, to the extent that a portion of it is above ground<sup>75</sup>. The Petitioners introduced authority in support of their position that no part of the Lower Level or Basement should be considered as Gross Living Area<sup>76</sup> although the Assessor asserted that those portions of a finished basement which are above grade should be valued<sup>77</sup>.

### The Square Footage Of The First Level

There appears to be little dispute as to the assessable square footage of the First Level<sup>78</sup>. Petitioners' expert witness and "registered architect"<sup>79</sup>, Mr. Samuel Vieira, reviewed the plans of the subject property and determined a First Level square footage of 3,905<sup>80</sup>. The Assessor entered a square footage for the First Level on the 2005 Property Card of 3,963<sup>81</sup> and the Respondents' Appraiser, Ms. Albanese, reported a square footage of 4,121.8 for the First Level in her Appraisal<sup>82</sup>.

### The Square Footage Of The Second Level

The Second Level of the subject property includes a walkway or catwalk around an area which is open from the First Level to the roof<sup>83</sup> often referred to as a cathedral ceiling. Mr. Vieira determined a square footage for the Second Level of 1,258<sup>84</sup>, the Assessor reported a square footage for the Second Level of 1,113 on the 2005 Property Card<sup>85</sup> and the Respondent's Appraiser, Ms. Albanese, counting the open space as assessable "ambiance"<sup>86</sup> with a "view of the Hudson River", reported a square footage of 2,442.7 for the Second Level<sup>87</sup>. The Petitioners introduced authority in support of their position that the open space of the Second Level should not be counted as Gross Living Area<sup>88</sup>.

### The Square Footage Of The Lower Level/Basement

The Lower Level is partially below grade [ one wall below grade<sup>89</sup> ] and partially at grade because the land on which the subject property is located slopes downward from the front of the house<sup>90</sup>. Mr. Vieira determined a square footage of 1,939 for the finished part of the basement<sup>91</sup> [ same quality of construction as First and Second Levels<sup>92</sup> and " on the plan I think there is a recreation room and then game room. The downstairs foyer area, kitchen area and the bathroom area "<sup>93</sup> ] and 1,021<sup>94</sup> for the unfinished part of the basement [ " storage rooms, mechanical areas and so

forth "95 ], neither of which he nor Petitioners' witness, Mr. Robert W. Balog96, considered to be Gross Living Area. Although Mr. Balog did not " add any assessed value for the basement "97 in his Report98 he recognized that the Basement has some value because " the basement is accounted for in the dwelling computations ( on the 1974 Property Card )...in the other features area "99. Mr. Vieira also determined a square footage of 524 for a garage area and 805 for an unheated unenclosed terrace100. The Respondents' Appraiser, Ms. Albanese, reported a square footage for the basement of 1,777.6101. And the Assessor reported a square footage of 2,100 for " Finished Basement Area " on the 2005 Property Card102.

### **The Value Per Square Foot**

In addition to determining the total square footage to be assessed and how that square footage is be treated [ i.e., gross living area, open space, level below grade, and so forth ], it is also important to determine the dollar amount to be assigned each square foot. Not surprisingly the parties have presented three different approaches.

First, the Assessor relied upon the methodology used during the Town wide revaluation in 1974. In generating the 2002 assessment the Assessor used \$20.00 per square foot for Gross Living Area but noted that the Cole Layer & Trumbull 1974 revaluation pricing sheets supported a square footage value of \$15.20 for Gross Living Area103. In that regard, however,

Petitioners pointed out that the 1974 Property Card shows a square footage value of \$13.76 for the Gross Living Area of the First and Second Levels<sup>104</sup>.

Second, the Petitioners challenged " the \$20.00 per square foot figure used by the Assessor ( because it ) does not come from actual costs but is derived from the Assessment System "<sup>105</sup>. Instead of relying upon the assessment methodology used in 1974 the Petitioners' witness Mr. Vieira<sup>106</sup> determined what it would cost in 1967 to construct (1) a half bath, a hot tub and an office, (2) 727 square feet of additional Gross Living Area and (3) 2.5 additional baths. " Utilizing the RS Means Historical Cost Index...Mr. Vieira computed the 1967 construction costs at \$1,760 ( for Hot Tub, Half Bath and Office ) "<sup>107</sup>. Using the RS Means Historical Cost Index, Mr. Vieira also testified that the cost to construct 727 additional square feet of Gross Living Area in 1967 would be \$17,448<sup>108</sup> or \$24 per square foot [ compare with the Assessor's use of \$20 per square foot for the value of Gross Living Area in 1974<sup>109</sup> ]. Mr. Vieira also testified that the cost of constructing 2.5 additional baths in 1967 would be \$4,000<sup>110</sup> [ compare to the Assessor's 1974 value of \$4,800 for " two plus two half baths " using the 1974 revaluation methodology<sup>111</sup> ( multiplying \$300 per fixture times 16 fixtures )].

Third, the Respondents' Appraiser, Ms. Albanese, did not address the issue of the 1974 per square foot costs of constructing unassessed Gross Living Area and the 1974 costs of constructing improvements such as a hot tub, bathrooms and office. Instead Ms. Albanese's appraisal relied upon assumed square footage costs for Gross Living Area of \$75 for 2002 and 2003

and \$100 for 2004 and 2005<sup>112</sup> and determined a value of \$2,425,000 as of June 1, 2002, \$2,525,000 as of June 1, 2003, \$2,675,000 as of June 1, 2004 and \$2,775,000 as of June 1, 2005<sup>113</sup>.

### **Bathrooms, Second Kitchen, Hot Tub, Office And Wine Cellar**

The remaining areas of dispute are the existence of additional bathrooms and other features including the second kitchen in the basement, a hot tub on the terrace, an office in the attic and a wine cellar.

Bathrooms: The 1967 Property Card<sup>114</sup> identifies 5 bathrooms with " 3 Fix't " and 1 bathroom with 1 " Fix't ". The 1974 Property Card<sup>115</sup> identifies 4 bathrooms ( 2 " bathroom " and 2 " toilet room " ). The 2005 Property Card<sup>116</sup> identifies " Number of Baths 10 rooms + 3 rooms bsmt 6 ½ + ½ " and a " Bath " in the " finished basement area ". The Appraiser, Mr. Albanese identified one additional half bath<sup>117</sup> not in the building plans. Mr. Vieira identified one half bath adjacent to the hot tub not in the building plans<sup>118</sup> and determined a 1967 construction cost of a portion of \$1,760<sup>119</sup>. The MLS listing<sup>120</sup> identified 6.2 baths.

Second Kitchen: The 1967 and 1974 Property Cards do not identify a second kitchen. The 2005 Property Card does identify a " Kit " in the " Finished basement area ". Both the Appraiser<sup>121</sup>, Ms. Albanese, and Mr. Vieira<sup>122</sup> identified a second kitchen. The Assessor assigned a value of \$5,000.00<sup>123</sup> for an additional kitchen<sup>124</sup>. The MLS listing identified 2 kitchens.

Hot Tub: The 1967 and 1974 Property Cards do not identify a hot tub. The 2005 Property Card, the Appraiser<sup>125</sup>, Ms. Albanese, and Mr. Vieira identified a hot tub. Mr. Vieira determined a 1967 construction cost of a portion of \$1,760<sup>126</sup> while the Assessor assigned the hot tub<sup>127</sup> a value of \$3,000. The MLS listing identified a hot tub.

Office: The 1967, 1974 and 2005 Property Cards do not identify an office. The Appraiser, Ms. Albanese<sup>128</sup>, and Mr. Vieira<sup>129</sup>a identified an attic office. Mr. Vieira determined a 1967 construction cost of a portion of \$1,760<sup>130</sup>.

Wine Cellar: The 1967, 1974 and 2005 Property Cards and the Appraiser, Ms. Albanese, and Mr. Vieira did not identify a wine cellar. The MLS listing identified a wine cellar.

## **DISCUSSION**

### **A Reasonable, Fair & Non-Discriminatory Review Process**

The Assessor utilized a reasonable, fair and non-discriminatory procedure for updating and correcting inventory data on tax parcels in the Town of Ossining. There are many reasons why an assessment may be changed to include the filing of building permits, letters of code enforcement, information from neighbors, corrections made by Realtors, appraisers and title searchers, MLS listings, **information from surveys, applications for subdivisions and the creation of new parcels, reports from the planning**

**board and required inspections.** The Assessor reviews all sales occurring in the Town of Ossining and relies upon " a procedure of screening all sales as outlined...in the manual of the International Association of Assessing Officers ". This screening process enables the Assessor to update and correct her inventory of tax parcels. The Assessor " drives every sale ". With respect to " outliers " the Assessor attempts to determine if the sale was arm's length, whether there is a mismatch between what was assessed and what was sold and may ask for an interior inspection. An assessment will be revised only if previously unassessed real property is discovered and only items added or removed are assessed. In the absence of an inventory issue the Town of Ossining does not change assessments.

#### **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<sup>131</sup> ( " 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<sup>132</sup> ( " 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<sup>133</sup> ( " 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<sup>134</sup> ( " 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>135</sup> and " improper assessment "<sup>136</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<sup>137</sup> ( " The respondents' practice of selective reassessment of only those properties in the village which were sold during the prior year contravenes statutory and constitutional mandates. In order to achieve uniformity and ensure that each property owner is paying an equitable share of the total tax burden the assessors, at a minimum, were required to review all property on the tax rolls in order to assess the properties at a uniform percentage of their market value. The respondents' disparate treatment of new property owners on the one hand and long term property owners on the other has the effect of permitting property owners who have been longstanding recipients of public amenities to bear the least amount of their cost... 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<sup>138</sup> ( " 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<sup>139</sup> ( " 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<sup>140</sup> ( " Despite the respondents' claim that the Assessor did not rely on the purchase price in determining the assessed value, the Assessor did not submit an affidavit in response to the petitioner's allegation that the Assessor had in fact testified that he did so " ); Feigert v. Assessor of the Town of Bedford<sup>141</sup> ( " 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<sup>142</sup> ( " the petition sets forth specific examples of gross disparities in the assessed value of allegedly comparable property " ); Matter of Reszin Adams v. Welch<sup>143</sup> ( " respondent's ` selective reassessment ` was not rationally based and therefore was improper " ); Matter of Averbach v. Board of Assessors<sup>144</sup> ( allegations that " assessments were made pursuant to an illegal ` welcome stranger ` assessment procedure " ); Gray v. Huonker<sup>145</sup> ( 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<sup>146</sup> ( selective reassessment found ).

### **High Coefficients Of Dispersion**

Second, a high coefficient of dispersion<sup>147</sup> may be a sign of selective reassessment<sup>148</sup> [ See e.g., Waccabuc Construction Corp. v. Assessor of Town of Lewisboro<sup>149</sup>( " 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<sup>150</sup> ].

### **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<sup>151</sup> ( " 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<sup>152</sup> ( " reassessment upon improvement is not illegal in and of itself. Here, the petitioners' properties were reassessed after recent improvement. However, rather than adding the value

of the improvement to the prior assessment...the properties were reassessed to a comparable market value that included the value of the improvement..." ); Matter of Bock v. Assessor of the Town/Village of Scarsdale<sup>153</sup> ( no selective reassessment found ); Matter of Villemena v. City of Mount Vernon<sup>154</sup> ( no selective reassessment found ); Teja v. The Assessor of the Town of Greenburgh<sup>155</sup> ( " Petitioners' argument, briefly stated, is that the only allowable increase in valuation above the assessment of June 1, 2001 could be one based solely on the addition of the kitchen appliances, which cost \$14,513.28. Anything more than this they contend is a ' welcome stranger ' increase based on the purchase price of \$1,175,000.00 paid in April 2002. ( There was no town-wide reassessment of all similarly situated properties. ). This valuation technique is unconstitutional because it is a selective reassessment which denies equal protection guarantees " ); Carter v. The City of Mount Vernon<sup>156</sup> ( 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<sup>157</sup> ( " 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 " ) ]. 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<sup>158</sup>.

### The Burden Of Proof

Notwithstanding the assertion that " The only possible explanation for the excessive 2002 increase is that it constitutes a poorly masked policy of sale chasing "<sup>159</sup> 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 [ Krugman v. Board of Assessors of the Village of Atlantic Beach, 141 A.D. 2d 175, 182, 533 N.Y.S. 2d 495 ( 2d Dept. 1988 ); Nash v. Assessor of the Town of Southampton, 168 A.D. 2d 102, 108, 571 N.Y.S. 2d 951 ( 2d Dept. 1991 )( " it cannot be said, on the present record, that the Town acted in bad faith...or that the plaintiffs were ` singled out for selective enforcement of tax laws that apply equally to all similarly situated taxpayers ` " ); Waccabuc Construction Corp. v. Assessor of the Town of Lewisboro, 166 A.D. 2d 523, 525, 560 N.Y.S. 2d 805 ( 2d Dept. 1990 ) ( failure to meet " heavy burden " of demonstrating that Lewisboro's 1983 assessment roll was improper or illegal " )].

### Of No Legal Significance

The Petitioners claim that the size of the assessment change alone [ " 88.00% of the sale price "<sup>160</sup> ] is sufficient proof of " selective reassessment ". In so stating the Petitioners seem to be relying upon

language in Stern v. Assessor of the City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 ( 2d Dept. 2000 )( " Most compelling is the fact that the 1996 assessed value of the Stern property was just over the 1995 purchase price plus improvements " ) as somehow creating a litmus test for proof of selective reassessment. Such reliance is not well founded. The Stern Court was faced with an Assessor who failed to explain his assessment methodology, unlike the Assessor herein, and proffer any " admissible evidence that the reassessments were lawful pursuant to a comprehensive assessment plan ". In fact, the Stern case and others like it demonstrate that when an Assessor fails to provide a reasonable explanation for the reassessment of real property the Courts will not hesitate in finding selective reassessment [ see e.g., DeLeonardis v. Assessor of the City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 ( 2d Dept. 1996 ) ( " The Assessor did not submit an affidavit disputing the claim that he relied on the purchase price in arriving at the assessed value"; selective reassessment found ); Carter v. City of Mount Vernon, No. 19301/02, Rosato, J., November 26, 2003 ( " the respondents do not so much as even identify or enumerate just what specific renovations or improvements they are referring to "; selective reassessment found ); Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)( West. Sup. 2005 )( the " Assessor has explained that the reassessment of the subject property...was based upon a multiple listing..." ); new inspection and assessment ordered; no selective reassessment found ); Matter of Bock v. Assessor of the Town/Village of Scarsdale<sup>161</sup> ( 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 ); Dale Joan Young v. The Town of Bedford, 9 Misc. 3d 1107(A) ( West. Sup. 2005 )( Assessor's assessment plan and explanations found to be " fair, reasonable and non-discriminatory "; no selective reassessment found ); Markim v. Assessor of the Town of Orangetown, 9 Misc. 3d 1115(A) ( Rockland Sup. 2005 )( " Assessor's reassessment plan and explanations found to be " incoherent and inexplicable methodology which was plainly unfair, unreasonable and discriminatory "; selective reassessment found ), mod'd 11 Misc. 3d 1063(A) ( Rockland Sup. 2006 )].

#### **The 2002 Assessment Was Poorly Executed**

While the Assessor did not selectively reassess the subject property, the 2002, 2003 and 2004 assessments challenged herein are vacated, nonetheless, because in preparing the 2002 assessment the Assessor, amongst other things, (1) relied upon an unverified and inaccurate 1999 MLS listing of the subject property, (2) failed to examine the 1965 building plans and the 1967 Property Card of the subject property and (3) relied upon the inaccurate 1974 Property Card which was prepared without an interior inspection and, evidently, without a review of the 1967 Property Card.

While the Assessor's methodology for updating and correcting inventory data is generally sound, fair and comprehensive, her 2002 assessment of the subject property was poorly executed, indeed, and she is ordered to render a new assessment for the years 2002, 2003 and 2004, following the

guidelines discussed herein [ See e.g., Villamena v. The City of Mount Vernon, 7 Misc. 3d 1020(A)( West. Sup. 2005 )( " While the Respondents have...(2) failed to compile an accurate inventory of improvements after conducting an inspection, (3) failed to estimate the cost of each observed improvement... the Petitioner has failed to present sufficient evidence of " selective re-assessment "...In the instant matter the Respondent Assessor has explained that the reassessment of the subject property from \$17,900 to \$26,000 was based upon a multiple listing and, further, that the \$26,000 was reduced to \$23,000 after an inspection of the subject property. While the inaccuracy and incompleteness of the Assessor's inventory of improvements and their actual value warrants, at the very least, a new inspection and assessment, such conduct does not support a finding of ' selective re-assessment ' " )].

#### **Guidelines For A New Assessment**

In rendering a new assessment of the subject property the Assessor shall consider the following guidelines.

#### **Square Footage: The First & Second Levels**

After careful consideration of the credible evidence the Court finds that the First Level has 3,935 square feet of Gross Living Area and the Second Level has 1,258 square feet of Gross Living Area. The square footage

of the First and Second Levels shall be valued between \$15.20 and \$13.76 per square foot.

### **Square Footage: The Lower Level**

The Court finds that the finished portion of the Lower Level has 2,019 square feet. The Lower Level with one wall below grade is no ordinary basement, however, but possesses exceptional decor<sup>162</sup> [ " of the same quality of construction ...as...the first and second floor "<sup>163</sup> ] and an excellent view<sup>164</sup>. Notwithstanding some authority to the contrary<sup>165</sup> it is fair under the circumstances herein<sup>166</sup> to value a portion<sup>167</sup> of the finished Lower Level as Gross Living Area<sup>168</sup>.

### **Bathrooms & Other Features**

The Court finds that one half bathroom, a second kitchen, a hot tub and an attic office were constructed between 1967 and 1974. In addition, it appears from comparing the 1974 Property Card [ 4 bathrooms ] with the 2005 Property Card [ 6 ½ + ½ bathrooms ] that " two and one half baths "<sup>169</sup> or " Two plus two half baths "<sup>170</sup> were not accounted for in the 1974 revaluation.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, N.Y.  
April 26, 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 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. Petitioners' Post Trial Brief dated March 2, 2006 [ " P. Memo. " ] at p. 6 ( " The property was sold during the prior year to the Petitioners for \$2,250,000.00, Based on the...assessment for 2002 of \$136,040.00, the equalized value is \$1,977,325.00 ( RAR 6.88% ) or 88.00% of the sale price " ).

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

4. Respondents' Exhibit [ " R. Ex. " ] G [ Property Card created in 1967 ].

5. Petitioner's Exhibit [ " P. Ex. " ] 11 [ Building Plans ].

6. R. Exs. L [ Respondents' Appraisal [ " R. App. " ]] at p. 4, M-1 through M-25 [ Photos ].

7. R. Ex. L at p. 29 ( " On the following page is a photograph taken from the curb in front of the property immediately adjacent to the subject on the south. It enjoys almost identical Hudson

River views that the subject property enjoys...There was a real sense and feel of ' the cape ' along the Ridgcrest Road " ).

8.P. Ex. 10; R. Ex. C.

9.R. Ex. G ( house described as two story with a full basement; the first story having a square footage of 3,465 and valued at \$20 per square foot for a total of \$69,300, the second story having a square footage of 924 and valued at \$11.00 per square foot for a total of \$1,016 and the finished part of the basement recreation area with a square footage of 762 valued at \$6.00 per square foot for a total value of \$4,372; 5 bathrooms with " 3 Fix't " and 1 bathroom with " 2 Fix't " ).

10.R. Ex. C.

11.R. Ex. H.

12.Trial Record [ " Tr. Rec. " ] at pp. 251-261 ( discussion of process of reassessment ).

13.Tr. Rec. at pp. 250-261.

14.R. Exs. A, B1, B2.

15.R. Ex. C.

16.R. Ex. C; Tr. Rec. at p. 304.

17.The 2005 Property Card at R. Ex. H states that there are 6 ½ and ½ baths.

18.R. Ex. C; Tr. Rec. at pp. 269-271.

19.R. Ex. C; Tr. Rec. at pp. 271-272.

20.R. Ex. C; Tr. Rec. at p. 273.

21.R. Ex. C; Tr. Rec. at p. 273.

22.Tr. Rec. at pp. 274-291.

23. Tr. Rec. at pp. 368-369 ( " A. There are many reasons why one would change a property card...Basically, anytime there is a change made that comes to our awareness, there is a change on the card...Q. What you did in this case was part of that general procedure of updating and correcting your property cards? A. Yes, we're required under the rules and regulations 190 of New York

State rules to maintain inventory on every property...this is something I'm required to keep. This information must be kept on record...A. The New York State Rules and Regulations for Assessment Administration...A. Office of Real Property Services..." ).

24. Tr. Rec. at pp. 274-275 ( " So, there are many reasons why an assessor will change an assessment. Not limited to building permits, letters of code enforcement, something was described as a two family or being used as two family with only one family being assessed, information from neighbors, through the public at large, corrections made by Realtors that come into the office, by appraisers...Title searchers, information from surveys... Subdivisions of the property which would require a creation of a new parcel, demolitions which are not done by permits in Ossining, they're done by letter. Reports from the planning board...required inspections and review for assessments " ).

25. R. Exs. D [ Eckert, Ed., Property Appraisal and Assessment Administration, The International Association of Assessing Officers, Chicago, Illinois, 1990 ], D-1; Tr. Rec. at pp. 277-279.

26. Tr. Rec. at p. 369.

27. Tr. Rec. at p. 281.

28. Tr. Rec. at pp. 295-286 ( " In general, every sale must be reviewed...The sales are the life blood of the assessor's office. You have to look at every single sale which we do. We typically drive every sale...We go out, and we physically drive those sales to make sure that what we can perceive from the exterior matches the inventory we have in hand..." ).

29. R. Ex. D at p. 137 ( " Outliers are properties with very high or low sales ratios. They may result from poor or outdated appraisals, non-arm's length sales, or a mismatch between the property sold and the property appraised. Particularly when the sample is small, outliers can distort ratio studies and should be reviewed carefully " ); Tr. Rec. at p. 287 ( " An outlier is a sales price, it's an assessment ratio to sale price that's out of the parameters by more than 25 percent, and it's quite vital to understand what's happening, why those sales are out of the parameters. It could be that the area, that particular neighborhood may have appreciated a greater rate..." ).

30. Tr. Rec. at pp. 289-290 ( "...you have to make sure ( it's a ) sale arm's length...And we try to ascertain that reason in every individual case when it's outside of the parameters of 25

percent. Q. Would one of the reasons be that what the property consists of is not consistent with your inventory or what you think the property consists of?...A...it's important to ascertain if what you've assessed and what is sold have the same inventory. Q. Now, if you ascertain that the inventory is different, what, if anything, would you do. A. I would make the change for that inventory and re-price, if it's a reduction or an increase accordingly " ).

31.Tr. Rec. at pp. 299, 316 ( " Because as a routine...We ask for an interior inspection when it's an outlier...and this property was an outlier " ).

32.Tr. Rec. at p. 291 ( " Now, in those cases where you do identify an inventory discrepancy, do you reassess the entire property, or do you add an assessed value to represent what you discovered?...A. Only the items that differ from the original card. Q. Are valued? A. Or removed, as they happen " ).

33.Tr. Rec. at pp. 289-291 ( " Q. Suppose...you do not find any discrepancy between your inventory and the actual inventory?...A. No, I would make no change...Q. Those cases where you identify these inventory discrepancies, is that the only time that you would change a property record card...A. No, I would change it as a result, but for all the reasons I outlined previously... Construction changes, either the information provided by neighbors, complaints, the property owner himself came in and said the assessment is too high, and I'd look back to the inventory..." ).

34. Tr. Rec. at pp. 292-294 ( " Q. 1999, 2000 or 2001? A. Right " ), 406 ( " I received the listing that was dated 11/30/1999...I thought, because I sent a letter out in 2001, so I think I must have had a listing prior to that " ).

35.R. Ex. E.

36. Tr. Rec. at pp. 317, 322-324 ( " So, I had no choice but to take the net difference of what I added from the estimated sketch ( R. Ex. C ) because they never measured the house, and from the ( MLS ) listing of 8,500 square feet. So, I came up with a net difference of 4,064 square feet " ).

37.Tr. Rec. at pp. 321, 324.

38. Tr. Rec. at p. 325.

39.Tr. Rec. at pp. 324-325.

40. Tr. Rec. at pp. 325-326.

41. Tr. Rec. at p. 298.

42. Tr. Rec. at p. 299.

43. R. Ex. R.

44. Tr. Rec. at p. 323 ( " I do know what prompted my attention to realize that the exterior measurements were incorrect is that when I read on the card that it was refused entry, and the measurements were also refused, information, entrance and measurements, then it was clear to me that's why there was such a difference between the record ( R. Ex. C ) and what was actually on the ( MLS ) listing " ).

45. Tr. Rec. at pp. 302-306.

46. Tr. Rec. at p. 303.

47. Tr. Rec. at pp. 305-306, 717 ( " Other than talking to various neighbors about these types of requests, we did nothing " ).

48. Tr. Rec. at pp. 716-717.

49. Tr. Rec. at pp. 418-419 ( " Whatever was missing from those sheets, I was able to ascertain early on in my tenure in Ossining what things were worth according to the pricing system that was used in 1974 " ).

50. E. Exs. A, B1, B2. Tr. Rec. at pp. 418-438.

51. Tr. Rec. at p. 380, R. Exs. A, B1, B2.

52. Tr. Rec. at pp. 434-436 ( using the pricing sheets [ R. Exs. A, B1, B2 ] " that price per square foot that was used on that 1974 table was \$15.20...A. If you see, I estimated \$20.00 per square foot and what I'm testifying is that it's \$15.20 is the base price that one would use for a house that's 4,064 additional square feet. So if you took ( \$15.20 ) per square foot, multiply by 4,064, that would give you a value of \$61,795.00 of additional value. Didn't know if that was built in 74 or 84 or 94 though, so I added a 30 percent differential to that number which resulted in ( \$20.00 per square foot and ) in a value of \$81,280.00 " ).

53. Tr. Rec. at p. 324.

54. Tr. Rec. at pp. 324-325, 370, 421-423.

55.Tr. Rec. at p. 325 ( " That would have been the estimate I would have used in 2002 for an additional kitchen, again, not knowing the age of that kitchen " ).

56. Tr. Rec. at pp. 325, 396 ( " It's not on ( R. Exs. A, B1, B2 ), but it's 15 plumbing points " ), 423-424, 426-430.

57. Tr. Rec. at pp. 325, 396 ( " It's ten points, that I know " ), 430-432.

58.Tr. Rec. 433 ( " I would have priced it at that time in 2002 and then discounted to the 1974 table. So, in other words, that value of \$2,000.00 represented something like a 25,000 to \$30,000.00 item...The Court: So, you started at 25,000? The Witness: Yes. The Court: And discounted back to 74? The Witness: Correct, using the assessment ratio...Q. What number did you arrive at for the wine cellar? A. 2000 for the wine cellar. " )

59.Tr. Rec. at pp. 325-326 ( " 20 points, yes " ), 396-397, 404, 459-461.

60. Respondents' Reply Memorandum dated March 21, 2006 at p. 4; Tr. Rec. at pp. 438-439; R. Ex. C.

61. R. Ex. C.

62. P. Ex. 33.

63. P. Ex. 11.

64. Tr. Rec. at pp. 413-414.

65. Tr. Rec. at pp. 358-362, 368.

66. Tr. Rec. at pp. 400-403, 413-414.

67. Tr. Rec. at pp. 371-374 ( " I've never reviewed the 1967 property record card. It's not part of our procedure to use a dated record once a reassessment has occurred " ).

68. Tr. Rec. at pp. 338-341.

69. Tr. Rec. at pp. 491-492.

70. Tr. Rec. at pp. 341-347, 351-353 ( Some of the information used by Ms. Fiske in preparing the 2005 Property Card was given to her by Ms. Albanese. Her appraisal was entered into evidence as R. Exs. L, K ).

71.Tr. Rec. at p. 353.

72.R. Ex. H; Tr. Rec. at pp. 337, 340, 343-356.

73.P. Ex. 14A; R. Ex. L at pp. 67-70.

74.Tr. Rec. at pp. 40-41, 123; P. Ex. 14A.

75. R. Ex. L at pp. 67-68 ( " In the case of the subject property, the land slopes downward a bit aggressively from the grade of Ridgecrest Road...So in order to get as much gross living area above grade as possible, which a buyer would want, the architect had to design and build as much house outside of the hill as possible. Viewing it this way, I made the judgment that since three of the sides of the lower level of the dwelling were above grade, that it should be included in the calculation of the total above-grade gross living area of the subject property. Subtracting out the portion at the rear of the ground level that were truly below grade, I considered this area basement area, and in this case, unfinished basement area. Therefore, I have calculated the number of rooms by level and then totaled them all to obtain a total room count, which I show in the following: Ground Level-Above Grade -game room, recreation, kitchenette, full bathroom " ).

76.P. Ex. 30 ( Residential Sales Comparison Approach, The Appraisal Institute, 2000 ); Tr. Rec. at RGL pp. 37 ( " The glossary of The Appraisal Institute publication is the basement defined as follows: ' The lowest part of a building that is wholly or partially below grade level of the surrounding soil, in single-family residences, this part is almost never considered the gross living area ' " ); P. Exs. 18, 18A ( The Uniform Residential Appraisal Report, Second Edition, The Appraisal Institute, 1994 ); Tr. Rec. at RGL pp. 41-42 ( " Q...In this section of the form, basement rooms, whether finished or unfinished below or above grade, are reflected in the basement section E-57 and are not included in a calculation of above grade gross living area '...A. That's correct. The basement is not included in the gross living area " ); P. Exs. 31, 31A ( New York State Office of Real Property Services' ( " ORPS " ) Assessor's Manual ( 2003 ) Section 9.13 ); Tr. Rec. at p. 670( " Q. Does the New York State Assessor's Manual 9.13 state such an area will not be added into the square footage of living area, and it will not be costed? A. That's what it says " ).

77. Tr. Rec. at pp. 710-712 ( referring to the ORPS Assessor's Manual at Section 9.13. " A...This manual was written originally in the 1970s, and the area of the style question about only

having finished basement area included in the ( Gross Living Area ) for raised ranches or split levels is completely without merit to today's construction and doesn't consider-if you take any river front community, any hillside community, take the Mediterranean, the homes are built with exposed lower levels. Doesn't mean...A split level, raised ranch or contemporary should not lead the assessor to not include a value of that area...913. Finished Recreation Room. It says here ` This will not be added to the square footage, and it will not be costed `. That doesn't mean it will not be valued. They're talking about the New York State Cost Tables with respect to that area, not the valuation of that space...I just taught this course April 15 for continuing education credits for assessors, and I include, if it's above grade and it's the same quality as the main living areas, then it's included in the total square footage " ).

78.R. Exs. 19, 22; Tr. Rec. at p. 631-632 ( " The Court:...But I haven't heard anything about the first floor, or maybe there is no contention on the first floor, is there? Mr. Beirne: No. Mr. Shumejda: No. The Court: On the first floor, we agree square footage-wise " ).

79.Tr. Rec. at p. 22-25.

80.P. Ex. 14A.; Tr. Rec. at p. 38.

81.R. Ex. H.

82.R. Ex. L at p. 70.

83.R. Exs. M-12, M-16, M-19, M-20, M-21, M-22, M-26.

84.P. Ex. 14A; Tr. Rec. at p. 39.

85.R. Ex. H; Tr. Rec. at p. 631 ( " Ms. Polzella: Our assessment didn't count it, but the appraisal does " ).

86.Tr. Rec. RGL at pp. 56-63 ( " A. It does not have a floor. I consider it living area...Q. So you included open space as gross living area? Yes or no?...Q. Well, tell me where the difference between 1113 and 2442.7 is if it's not the open space. A. The difference in the calculation is attributed to the style of the dwelling. The style of the dwelling is a contemporary-style dwelling built into the side of the hill...that would again maximize that view of the Hudson River and in doing so, he would have to build wide and he would have to build tall...I reasoned...that that should be included. That adds significant value to the property, and by excluding it, it diminishes an

integral part of that house...It's part of the ambiance of that house...There, I ration that it should be included as square footage of living area in that property " ).

87.R. Ex. L. at p. 70.

88.P. Ex. 17A.; Tr. Rec. at RGL p. 2 ( " Q. Do you know whether the area, ` openings to the upper floors that expose the floor below cannot be included in the ( Gross Living Area ) for the second or third floors `, do you know if that's a policy of the Appraisal Institute? A. No. That may be a recommendation, but I don't know it to be a policy. " ).

89.Tr. Rec. at p. 123.

90.R. Exs. M-4, M-5, M-24.

91.P. Ex. 14A; Tr. Rec. at p. 39.

92.Tr. Rec. at p. 68.

93.Tr. Rec. at p. 67.

94.P. Ex. 14A; Tr. Rec. at p. 39.

95.Tr. Rec. at p. 67.

96.Tr. Rec. at p. 123; P. Ex. 14A.

97. Tr. Rec. at pp. 108-109.

98.P. Ex. 14C.

99.Tr. Rec. at p. 109.

100.P. Ex. 14A; Tr. Rec. at pp. 39-40.

101.R. Ex. L at p. 70.

102.R. Ex. H.

103.R. Exs. A, B1, B2; Tr. Rec. at pp. 434-436 ( " If you see, I estimated \$20.00 per square foot, and what I'm testifying is that it's \$15.20 is the base price that one would use for a house that's 4,064 additional square feet " ). Compare to the 1967 Property Card used \$20.00 per square foot for " Base " [ applied to a square footage of 3,465 ] and \$11.00 per square foot for the " 2<sup>nd</sup> St. " [ applied to a square footage of 924 ].

104. P. Memo. at p. 3 ( "...the 1974 unit value per square foot of living space can be determined from the 1974 property card ( Ex. C ). The card states that the Petitioners' home is a two story house under the heading in the lower left hand corner entitled ' Dwelling Computation ' ' 2.0 story ' . As a two-story home, the card shows the computation of ' 1,520sq.ft/\$41,830 ' ...that means there are 1,520 square feet on each floor of the two story house for a total square feet of 3,040. When you divide \$41,830 by 3,040 square feet, the 1974 cost pursuant to the 1974 property card is \$13.76 per square foot " ).

105. See para [f] of Petitioners' Reply Findings Of Fact And Conclusions Of Law dated April 3, 2006( " P. Reply Findings " ) ( " In contrast, the \$20.00 per square foot figure used by the Assessor does not come from actual costs but is derived from the Assessment System. There can be no correlation between the numbers and the \$20.00 per square foot figure used by the Assessor because the Court does not have a copy of the manual which was utilized during the 1974 reassessment. Therefore, the trier of fact has no way to determine how this amount was calculated " ); P. Memo. at pp. 2-3 ( " The \$20 per square foot used in 2002 and thereafter by the Assessor has no factual support in the record. The portions of the 1974 Revaluation Manual supplied by the Town during the trial do not contain any reference to \$20 per square foot " ).

106. P. Exs. 14A, 14B; Tr. Rec. at pp. 42-48.

107. P. Memo. at p. 1; P. Exs. 14A, 14B; Tr. Rec. at pp. 42-44.

108. Tr. Rec. at p. 49; P. Ex. 14B.

109. Tr. Rec. at pp. 434-436.

110. Tr. Rec. at p. 49; P. Ex. 14B.

111. Tr. Rec. at pp. 308-309, 324.

112. R. Ex. L at p. 94.

113. R. Ex. L. at p. 98.

114. R. Ex. G.

115. R. Ex. C.

116. R. Ex. H.

117. R. Ex. L at pp. 50.
118. P. Ex. 14A at p. 1.
119. P. Exs. 14A, 14C; Tr. Rec. at p. 43.
120. R. Ex. E.
121. R. Ex. L at p. 51.
122. P. Ex. 14A at p. 2.
123. Tr. Rec. at p. 325 ( " That would have been the estimate I would have used in 2002 for an additional kitchen, again, not knowing the age of that kitchen " ).
124. Tr. Rec. at pp. 325, 396 ( " It's not on ( R. Exs. A, B1, B2 ), but it's 15 plumbing points " ), 423-424, 426-430.
125. R. Ex. L at pp. 52-53.
126. P. Exs. 14A, 14C; Tr. Rec. at p. 43.
127. Tr. Rec. at pp. 325, 396 ( " It's ten points, that I know " ), 430-432.
128. R. Ex. L at pp. 46-47.
129. P. Ex. 14A at p. 3.
130. P. Exs. 14A, 14C; Tr. Rec. at p. 43.
131. Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, 488 U.S. 336, 344, 109 S. Ct. 633 ( 1989 ).
132. Corvetti v. Town of Lake Pleasant, 227 A.D. 2d 821, 823, 642 N.Y.S. 2d 420 ( 3d Dept. 1996 )
133. Matter of Fred Chasalow v. Board of Assessors, 202 A.D. 2d 499, 609 N.Y.S. 2d 27 ( 2d Dept. 1994 ).
134. Nash v. Assessor of Town of Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 ( 2d Dept. 1991 ).
135. 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 " ).

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

137. 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 ).

138. Matter of Stern v. City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 ( 2d Dept. 2000 ).

139. Matter of Feldman v. Assessor of Town of Bedford, 236 A.D. 2d 399, 653 N.Y.S. 2d 28 ( 2d Dept. 1997 ).

140. Matter of DeLeonardis v. City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 ( 2d Dept. 1996 ).

141. Feigert v. Assessor of the Town of Bedford, 204 A.D. 2d 543, 544, 614 N.Y.S. 2d 200 ( 2d Dept. 1994 ).

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

143. Matter of Reszin Adams v. Welch, 272 A.D. 2d 642, 707 N.Y.S. 2d 691 ( 3d Dept. 2000 ).

144. Matter of Averbach v. Board of Assessors, 176 A.D. 2d 1151, 575 N.Y.S. 2d 964 ( 3d Dept. 1991 ).

145. Gray v. Huonker, 305 A.D. 2d 1081, 758 N.Y.S. 2d 731 ( 4<sup>th</sup> Dept. 2003 ).

146. Matter of Markim v. The Town of Orangetown, 6 Misc. 3d 1042(A) ( West. Sup. 2005 ), 9 Misc. 3d 1115(A) ( West. Sup. 2005 ) mod'd 11 Misc. 3d 1063(A) ( Rockland Sup. 2006 ).

147. 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 " ).

148. 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.

149. Waccabuc Construction Corp. v. Assessor of Town of Lewisboro, 166 A.D. 2d 523, 524, 560 N.Y.S. 2d 805 ( 2d Dept. 1990 ).

150. Matter of Fred Chasalow v. Board of Assessors, 202 A.D. 2d 499, 500, 609 N.Y.S. 2d 27 ( 2d Dept. 1994 ).

151. 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 ).

152. Matter of Stern v. City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 ( 2d Dept. 2000 ).

153. Matter of Bock v. Assessor of the Town/Village of Scarsdale, 2006 WL 328503 ( West. Sup. 2006 ).

154. Matter of Villemena v. City of Mount Vernon, 7 Misc. 3d 1020(A)( West. Sup. 2005 ).

155. Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, Decision May 27, 2004 .

156. Carter v. The City of Mount Vernon, Index No: 19301/02, J. Rosato, Decision November 25, 2003.

157. Joan Dale Young v. The Town of Bedford, 2005 WL 2230399 ( West. 2005 ).

158. Such cases have involved a delay in the implementation of a comprehensive reassessment program [ See e.g., Nash v. Assessor of Town of Southampton, 168 A.D. 2d 102, 109, 571 N.Y.S. 2d 951 ( 2d Dept. 1991 )( " Whether the delay in the implementation of a comprehensive reassessment of all of the parcels in a taxing jurisdiction can result in equal protection violation...it cannot be said, on the present record, that the Town acted in bad faith..." )], the reassessment of 150 waterfront parcels because of " the rapid rate of appreciation of property " [ See e.g., Mundinger v. Assessor of the City of Rye, 187 A.D. 2d 594, 590 N.Y.S. 2d 122 ( 2d Dept. 1992 )( " The reassessment program... would be justified...if waterfront residential property appreciated at a higher rate than nonwaterfront residential property " )], the use of two different methods of assessing Class I property [ See e.g., Matter of Fred Chasalow v. Board of Assessors, 176 A.D. 2d 800, 803, 575 N.Y.S. 2d 129 ( 2d Dept. 1991 )( " Indeed, it is well settled that a system of assessment which is challenged on the ground of inequality may nevertheless survive judicial scrutiny if the assessing authority demonstrates that the classification which results in unequal treatment bears a rational relation to the achievement of a legitimate governmental objective " )], the reclassification of Class II property to Class I property [ See e.g., Matter of Acorn Ponds v. Board of Assessors, 197 A.D. 2d 620, 621, 603 N.Y.S. 2d 491 ( 2d Dept. 1993 )( " There is no proof in the record that the failure to reassess all Class I property when the petitioner's property was reassessed resulted in disparate tax treatment of a constitutional dimension " )], the method of dividing " the Town into four neighborhoods for valuation purposes " [ See e.g., Matter of Akerman v. Assessor of Town of Hardenburg, 211 A.D. 2d 916, 917, 621 N.Y.S. 2d 154 ( 3d Dept. 1995 )( petitioners have not established that the formulas used by respondents were improper or inequitable or that the assessments violate constitutional requirements " )] and the methodology of partially assessing real property [ See e.g., Matter of MGD Holdings v. Town of Haverstraw, 8 Misc. 3d 1013(A) ( West. Sup. 2005 )( motion for summary judgment denied; fact issues to be resolved at trial ), reargument granted 11 Misc. 3d 1054(A)( Rockland Sup. 2006 ); Matter of Markim v. The Town of Orangetown, 11 Misc. 3d 1063(A) ( Rockland Sup. 2006 ). ].

159. P. Memo. at p. 6.

160. P. Memo. at p. 6.

161. Matter of Bock v. Assessor of the Town/Village of Scarsdale, 2006 WL 328503 ( West. Sup. 2006 ).

162. R. Ex. M-24.

163. Tr. Rec. At p. 68 ( " Q. Would you say the basement was of the same quality of construction as the, the finished portion of the basement, would it be the same quality of construction as, say, the first and second floor? A. Yes " ).

164. R. Exs. M-4, M-5, M-8, M-24.

165. P. Memo. at pp. 15-17; P. Ex. 30 ( Residential Sales Comparison Approach, The Appraisal Institute, 2000 ); Tr. Rec. at RGL pp. 37 ( " The glossary of The Appraisal Institute publication is the basement defined as follows: ` The lowest part of a building that is wholly or partially below grade level of the surrounding soil, in single-family residences, this part is almost never considered the gross living area ` " ); P. Exs. 18, 18A ( The Uniform Residential Appraisal Report, Second Edition, The Appraisal Institute, 1994 ); Tr. Rec. at RGL pp. 41-42 ( " Q...In this section of the form, basement rooms, whether finished or unfinished below or above grade, are reflected in the basement section E-57 and are not included in a calculation of above grade gross living area `...A. That's correct. The basement is not included in the gross living area " ); P. Exs. 31, 31A ( New York State Office of Real Property Services' ( " ORPS " ) Assessor's Manual ( 2003 ) Section 9.13 ); Tr. Rec. at p. 670( " Q. Does the New York State Assessor's Manual 9.13 state such an area will not be added into the square footage of living area, and it will not be costed? A. That's what it says " ).

166. Tr. Rec. at pp. 710-712 ( referring to the ORPS Assessor's Manual at Section 9.13. " A...This manual was written originally in the 1970s, and the area of the style question about only having finished basement area included in the ( Gross Living Area ) for raised ranches or split levels is completely without merit to today's construction and doesn't consider-if you take any river front community, any hillside community, take the Mediterranean, the homes are built with exposed lower levels. Doesn't mean...A split level, raised ranch or contemporary should not lead the assessor to not include a value of that area...913. Finished Recreation Room. It says here ` This will not be added to the square footage, and it will not be costed `. That doesn't mean it will not be valued. They're talking about the New York State Cost Tables with respect to that area, not the valuation of

that space...I just taught this course April 15 for continuing education credits for assessors, and I include, if it's above grade and it's the same quality as the main living areas, then it's included in the total square footage " )

167. It is not clear at this point what precisely the assessable square footage of such a portion should be given the absence in the record of accurate measurements.

168. In determining the value of a portion of the finished basement the Assessor should consider the following factors, (1) the square footage value of between \$15.20 and \$13.76 for the First and Second Levels, (2) P. Ex. 20 and Mr. Balog's discussion of a 10% adjustment for a finished basement [ Tr. Rec. at p. 211 ], (3) the Cole Layer & Trumbull 1974 revaluation methodology for the pricing of finished basements [ R. Ex. A at p. 2 ] and (4) whether or not the value of the finished basement was adequately considered in 1974 as reflected on the 1974 Property Card [ R. Ex. C ( " Other Features...Bsmt. Rec. Room 500 +13 ( points ) " ) ]. In addition, Mr. Balog recognized that the basement had some value because " the basement is accounted for in the dwelling computations ( on the 1974 Property Card )...in the other features area " ( Tr. Rec. at pp. 109, 180-198 )].

169. P. Ex. 14B at p. 1. Mr. Vieira determined the 1967 construction costs of " two and one half baths " to be \$4,000.00.

170. Tr. Rec. at pp. 324-325, 370, 421-423. The Assessor assigned a value to " Two plus two half baths " of \$4,800.00.