

STATE OF NEW YORK
SUPREME COURT, COUNTY OF ESSEX

In the Matter of
VIRGINIA ADAMS et al.,

Petitioners,

v

RICHARD S. SCHOENSTADT,
THOMAS ERIKSON and RICHARD NEWELL,
constituting the Board of Assessors of
the Town of Schroon, et al.,

Respondents.

Law Office of Robert L. Beebe, LLC, Clifton Park (Robert L. Beebe of counsel), for Petitioners.

Hacker & Murphy, LLP, Latham (Patrick L. Seely, Jr. of counsel), for Respondents.

JAMES P. DAWSON, J.

The Court is asked to resolve the Respondents' motion to dismiss in this CPLR article 78 proceeding. This proceeding was commenced to challenge a variety of actions taken by the Town of Schroon with regards to its 2006 property tax assessment. In particular, the first claim of the amended petition alleges that the Town has failed to maintain its assessments at 100% of property value, notwithstanding the State Office of Real Property Services' (hereinafter ORPS) certification that such was the case, and that the Town's failure to do so violates their statutory obligation to do so and otherwise prevents the Petitioners from obtaining relief from unequal assessments. The second, third and the majority of the fifth and sixth claims all essentially allege the same thing,

DECISION AND ORDER

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namely that the Town failed to uniformly assess property values, although the claims differ in being variously based upon statute or the equal protection and due process clauses of the Federal and State Constitutions. The fourth claim is closely related to the uniformity claims and asserts that, because the Town failed to uniformly assess property values, it is not entitled to moneys it received by the State for that purpose. The remaining portion of the fifth claim asserts that specific parcels of property were unequally assessed as compared to similar adjacent parcels and that such is the result of favoritism. Specifically, the fifth claim asserts that certain property owned by the Petitioner Katherine Vondrak is assessed at a much higher per acre than adjacent property owned by Roger Friedman, a member of the Schroon Town Board. It also alleges that residential property on Continental Drive (none of which, notably, appears to be owned by any of the Petitioners) experienced higher increases in assessed value than adjacent property on the same street owned by Cathy Moses, the Schroon Town Supervisor. The remaining portion of the sixth claim alleges that the Town's assessment or property record cards are missing and/or incomplete for the 2006 assessment roll. The Petitioners seek a variety of relief, including a complete revaluation of all real property in the Town of Schroon, correction and equalization of the 2006 assessment roll, voiding of the 2006 assessment roll, an order directing the Town to apply for state aid and to comply with state law requiring uniform assessments and an order prohibiting the Town from favoring certain individuals over others in its property tax assessments.

The Respondents now move to dismiss the petition.¹ The Respondents assert that the

¹ The Respondents apparently served an answer to the amended petition, but a copy of such is not included in the motion papers (*see* Petitioners' Memorandum of Law, pg. 1). Although such would defeat a summary

Petitioners' various claims involving the uniformity of the 2006 assessment must be raised in a RPTL article 7 proceeding, which they were not. The Respondents also argue that the Petitioners' claims regarding uniformity are essentially a backdoor challenge to the equalization rate set by ORPS, which is not a proper subject of this proceeding. The Respondents also question the Petitioners' use of certain data and assert that the Petitioners' claims of favoritism are conclusory and insufficient to withstand a motion to dismiss, particularly given the evidence submitted by the Respondents showing that there are significant differences between the parcels that are the subjects of those claims. The Respondents take issue with several of the remedies requested by the Petitioners, arguing that the Court lacks the authority to direct them to undertake a discretionary revaluation. Even if the Court did have the authority, the Respondents assert that striking the assessment roll or ordering a revaluation is not justified in this case and would only create more problems.

The Petitioners respond and argue that a CPLR article 78 proceeding is appropriate to challenge an assessor's illegal methodology in creating an assessment roll, including where the Petitioners allege that there has been an equal protection violation due to differences in the assessed value of similar properties. The Petitioners also argue that the Court can order a complete revaluation and to assess property at full value and respond to the Respondents' claims that their expert misused certain data. The Respondents submit various documents in reply.

The Respondents' motion is granted in part. On a motion to dismiss a CPLR article 78 proceeding, the Court will consider the petition only and will deem its allegations to be true

judgment motion, it does not prevent the Court from considering the motion as one to dismiss (*see* CPLR 3212 [b]).

(see *Matter of N.J.Koss, Inc. v Regan*, 149 AD2d 785, 787-788 [1989]). As can be seen below, however, a number of the Petitioners' claims fail to state cognizable causes of action and must be dismissed.

Addressing the Petitioners' claims regarding the uniformity of the assessments first, "[i]t is well settled that unless it is asserted that the taxing authority acted without jurisdiction, that the tax itself is unconstitutional or that the method employed involving several properties is unconstitutional, the sole vehicle for review of an individual tax assessment is pursuant to RPTL article 7" (*Matter of Bassett Mtn. Recreation Ctr. v Town of Jay Bd. of Assessors*, 232 AD2d 934 [1996]). With regards to the third exception, a CPLR article 78 proceeding is proper only if "the challenge is based upon the method employed in the assessment of several properties rather than the overvaluation or undervaluation of specific properties" (*Matter of Board of Managers of Greens of N. Hills Condominium v Board of Assessors of County of Nassau*, 202 AD2d 417, 419 [1994], *lv denied* 83 NY2d 757 [1994]). Here, the Petitioners make next to no allegations regarding specific defects in the method of assessment, instead relying on their contention that parcels are either overvalued or undervalued in the Town's assessment.² To the extent the Petitioners do point to some problem with methodology – such as their allegation that the Town has not determined the value of each parcel within the past six years (Petition, ¶ 39) – they are not only conclusory, but fail to draw any

² It is worth noting that the evidence relied upon by the Petitioners to show non-uniformity is seriously flawed. If actual sales are to be used to show unequal assessment, those sales must occur "during the year in which the assessment under review was made" (RPTL 720[3][b][2]). Accordingly, the only actual sales data that is relevant to determining whether a 2006 assessment is unequal are those sales that occurred from July 1, 2004 to June 30, 2005 (see RPTL 301 [as amended by L 2004, ch 733]; *Matter of Markus v Assessors of Town of Taghkanic*, 24 AD3d 1066, 1067-1068 [2005], *lv denied* 6 NY3d 709 [2006]). The Petitioners' expert relies exclusively on actual sales that occurred *after* this period, making the expert's calculations and conclusions based on that data very questionable.

connection between the alleged failings and a lack of uniformity (*see Samuels v Town of Clarkson*, 91 AD2d 836, 837 [1982]). As the Petitioners' claims regarding uniformity were not brought in a RPTL article 7 proceeding, the second, third and sixth claims, as well as the portion of the fifth claim related to uniformity throughout the assessment roll in general, must be dismissed.³ The fourth claim, which is intrinsically connected to those uniformity claims, must also be dismissed.

The Court reaches the same conclusion with regards to the Petitioners' first claim. To the extent the Petitioners argue that the equalization rate itself is incorrect, the Petitioners lack standing to make that argument and the Court does not have subject matter jurisdiction to consider it (*see Matter of Feiner v New York State Off. of Real Prop. Servs.*, 25 AD3d 1005, 1006-1007 [2006], *lv denied* 6 NY3d 712 [2006]). The remainder of the first claim is essentially a backdoor attempt to make the same argument, with the Petitioners arguing that the Town's assessments do not have a 100% equalization rate in actuality, notwithstanding what ORPS concluded, which prejudices the Petitioners by preventing them from claiming that their assessments are unequal. In other words, the equalization rate is incorrect and is preventing the Petitioners from challenging their assessments. As the Court lacks jurisdiction to consider such an argument, the first claim is dismissed.

That leaves the portions of the fifth claim not related to the uniformity argument. The Petitioners assert that the Vondrak and Friedman parcels are "virtually identical [and] adjacent," as are the parcels surrounding the Moses parcel. They also allege that the assessments for the Moses

³ A portion of the sixth claim alleges "on information and belief" that certain documents were unavailable from the Town. This allegation is wholly conclusory and the Petitioners make no effort to show that they are actually aware of any such problems. In any event, the petition fails to allege how such is related to the alleged due process violation. Accordingly, the entire sixth claim must be dismissed.

and Friedman parcels are, respectively, being increased at a significantly slower rate or have an assessed value per acre much lower than the adjoining parcels, providing figures to support their belief. The Respondents have produced evidence that the differing assessments are not the result of favoritism and are reasonably based upon differences in the properties. That evidence is not conclusive, however, as the Respondents rely upon the chairman of the Town's board of assessors, the Respondent Richard Schoenstadt, to opine on the significance of various differences between the parcels at issue. While such evidence would undoubtedly be of value on a summary judgment motion, this is not a summary judgment motion. Affording the petition every favorable inference, as the Court must on a motion to dismiss, the Petitioners have stated a claim sufficient to survive a motion to dismiss on that portion of the fifth claim alleging favoritism (*see Matter of Resnick v Town of Canaan*, 38 AD3d 949, 951-952 [2007]).

The Respondents' remaining arguments regarding the remedies sought by the Petitioners are moot, as dismissal of the challenges to the assessment roll as a whole negate any possibility that drastic remedies will be required to correct the 2006 assessment roll.

ORDERED that the Respondents' motion to dismiss the petition is granted in part, and the first through fourth and sixth claims, as well as that portion of the fifth claim alleging a lack of uniformity in the 2006 assessment roll, are dismissed. Any relief requested which is not specifically granted herein is denied, and no motion costs are awarded to any party.

The original of this Decision and Order, together with the papers supplied, are returned to the Respondents' attorneys for filing and service with notice of entry. Those papers consist of the

following: notice of motion dated May 15, 2007; affidavit of Richard S. Schoenstadt, sworn to May 15, 2007, with exhibits; affirmation of Robert L. Beebe dated July 12, 2007; affidavit of Patrick L. Seely, Jr., sworn to August 10, 2007, with exhibit.

Decided: August 30, 2007.



JAMES P. DAWSON, JSC

ENTER: