

To commence the 30-day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

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JUAN TORRES, CANDICE TORRES, TOWER HILL
2014 LLC, TOPABESA LLC, SL KEANE WOODS
LLC, DAVID BROSER and LORIE BROSER,

Petitioners,

DECISION AND ORDER

Index No.: 2022-53437

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

DONNA DIPIPPA,¹ ASSESSOR OF THE TOWN OF
AMENIA, TOWN OF AMENIA BOARD OF
ASSESSMENT REVIEW, TOWN OF AMENIA TOWN
BOARD, WEBUTUCK CENTRAL SCHOOL
DISTRICT, DOVER UNION FREE SCHOOL
DISTRICT, WASSAIC FIRE DISTRICT, AMENIA
FIRE DISTRICT and COUNTY OF DUTCHESS,

Respondents.

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ACKER, J.S.C.

NYSCEF Documents numbered 1-15, 25, 37-47, 52-58 and 64 were read on the Petition of Juan Torres, Candance Torres, Tower Hill 2014 LLC, Topabesa LLC, SL Keane Woods LLC, David Broser and Lorie Broser (hereinafter referred to collectively as “Petitioners”) against Respondents Donna DiPippo, Assessor of the Town of Amenia (“DiPippo”), Town of Amenia Board of Assessment Review and Town of Amenia Town Board (hereinafter referred to collectively as “Town Respondents”), Webutuck Central School District (“Webutuck”), Dover

¹ The Court has amended the Caption *sua sponte* to correct the spelling of Respondent DiPippo’s name.

Union Free School District (“Dover”), Wassaic First District (“Wassaic”), Amenia Fire District (“Amenia Fire”) and County of Dutchess (“Respondent County”).

Petitioners commenced the instant proceeding through the filing of a Notice of Petition and Verified Petition on or about October 26, 2022. They allege that they each own real property in the Town of Amenia and that they have paid real estate and school taxes based upon unlawful assessments imposed by Respondent Town Assessor. Petitioners further allege that the assessment roll filed by Town Respondents represents a system of selective reassessment of properties, without a rational basis and without a lawfully recognized basis. They seek a judgment and order determining that the Town of Amenia 2022 Assessment roll is illegal, irrational and unconstitutional.

By Decision and Order dated April 10, 2023, the Petition was dismissed against Respondent Amenia Fire and, by Stipulation dated April 18, 2023, Petitioners discontinued the action against Respondent Wassaic Fire. The remaining Respondents have submitted Answers to the Petition, which include objections in point of law.

This is the third such action that has been commenced against the Town Respondents. The first action challenged the 2020 Assessment Roll (Torres, et al v. Boryk, et al, Index No. 2020-53511, hereinafter “2020 Proceeding”) and the second challenged the 2021 Assessment Roll (Torres, et al v. Boryk, et al, Index No. 2021-54451, hereinafter “2021 Proceeding”). Both the 2020 Proceeding and the 2021 Proceeding were ultimately dismissed for failure to join necessary parties.

Nature of the Instant Proceeding

Paragraph 1 of the Petition describes the instant proceeding as follows:

This is a proceeding pursuant to the United States and New York State Constitutions' Equal Protection Clauses, challenging Respondents' assessment of residential properties within the Town of Amenia, which causes disparate treatment of property owners with the same type of property, is unlawful and discriminatory because it places a higher tax burden on some properties of the same type, and lower burden on other properties of the same type. In addition, Respondents reassess properties upon a selective, arbitrary basis, which results in tax burdens being imposed without rational proportionality among properties of the same type, denying owners equal protection under the law.

Accompanying the Petition, and incorporated therein by reference, is the Affidavit of Laurence Farbstein ("Farbstein"), who is identified as an expert in the field of real property taxation and assessment (hereinafter "Farbstein Affidavit"). Farbstein also submitted affidavits in support of the 2020 and 2021 Proceedings and those affidavits, and their exhibits, are annexed to his current Affidavit.

The Petition alleges that based upon Farbstein's examination of the 2020, 2021 and 2022 Amenia Assessment Rolls, as well as additional data regarding recent sales trends and other available information, he concludes that

(i) there are significant deficiencies in the treatment of similarly situated residential properties; (ii) the assessment of certain Town official's properties indicates considerable inconsistencies in the valuation and assessment processes in the Town of Amenia, which may or may not be deliberate; and (iii) most importantly, that there is clear and compelling evidence that the residential portion of the 2022 Assessment roll for the Town of Amenia does not treat similarly situated homeowners equitably, or uniformly, and it is discriminatory. This evidence also establishes that Ms. DiPippo has adopted the policies of her predecessor in office, and that she has furthered a "neighborhood" system of taxation that is completely irrational and unequal.

Petition, paragraph 15.

Petitioners further allege that the “system” employed by Respondents is not a lawful or fair system, and attempting to remedy parts of it only impairs the remainder more intensely.

Farbstein Affidavit

To support these conclusions, Petitioners rely exclusively on the Farbstein Affidavit. Farbstein indicates that in preparation for his Affidavit, he reviewed his prior submissions and the applicable data for the 2022 Assessment Roll available on the Office of Real Property Tax Services (“ORPTS”) website, specifically, Data Warehouse. He also reviewed the vacant and residential portions of the 2022 Tax Roll.

Farbstein reviews all of the improved residential properties in the Town, breaks them down into three of the five “Neighborhoods” created by the Town and then analyzes the properties based upon building style, total assessed value and assessed value per square foot. He annexes various charts to support his conclusions, including charts that he alleges show the inequality that exists in 2022 Assessment Roll.

Neighborhoods

According to Farbstein, there are 1281 improved residential properties in the Town, spread over five “Neighborhoods,” which were created by the Assessor. Neighborhood 1 contains 647 properties, Neighborhood 2 has 542 properties and Neighborhood 5, which encompasses Silo Ridge, contains 90 properties. As Neighborhoods 3 and 4 consist of only 1 property each, only Neighborhoods 1, 2 and 5 are relevant for the purpose of the 2022 Assessment analysis.

Farbstein states that, excluding Silo Ridge, the remaining Neighborhoods consist of 1191 properties. The Assessor uses 15 building styles for the improved residential properties and the majority of the homes in Neighborhoods 1 and 2 fall into two categories – Ranches (273 properties)

and “old style,” built prior to 1940 (350 properties). Farbstein avers that the 1191 properties in Neighborhoods 1 and 2 had an aggregate assessed value of \$525,433,900. In Neighborhood 5, the 90 properties consist of two building styles – contemporary and town house, and these 90 properties are assessed at a total of \$306,778,245. Based on these numbers, Farbstein concludes that Neighborhood 5 has 7% of the residential properties, but 37% of the overall residential assessment.

Assessments Per Square Foot

Farbstein prepared a summary as to assessments on a building per square foot basis for Neighborhoods 1, 2 and 5. He found that the mean and median per building square foot values in Neighborhood 1 and Neighborhood 2 track closely within a tight (\$200-\$250) per square foot range, which shows “a somewhat relative assessment consistency.” For Neighborhood 5, Farbstein calculated the mean and median values as \$772.12 and \$720.82, respectively, which is over \$500 per square foot more than in Neighborhoods 1 and 2.

Neighborhood 5 Chart

Farbstein’s Affidavit annexes a graph for Neighborhood 5 (sometimes referred to as “Neighborhood 5 Chart” or “Exhibit 10”), which he asserts shows the 90 Silo Ridge properties and their assessments. Farbstein notes that all of the properties in Neighborhood 5 are recently sold because Silo Ridge is new, particularly when compared and contrasted with the rest of the Town. He further avers that given Silo Ridge’s amenities, when compared and contrasted to the rest of the Town, the purchase prices paid for these properties reflected a significant premium or “intangible component.”

According to Farbstein, Exhibit 10 demonstrates that there is no consistency or uniformity in Neighborhood 5 and he maintains the assessments do not follow an equitable pattern or theme. He describes the Chart as showing “scatterplot” issues with the 90 properties in Neighborhood 5 and states that said Chart shows “what is essentially a 50% line, depicting properties are either below, or above it.” In sum, Farbstein opines that there is “no equality/uniformity within Neighborhood 5, as compared to the properties within it, or as compared to the majority of properties in neighborhoods 1 and 2.”

Affidavits from Prior Proceedings

While Farbstein annexes his affidavits from the Prior Proceedings, he spends only three paragraphs addressing the substance of these prior Affidavits. Two of the paragraphs contain general conclusions regarding the purpose of creating neighborhoods (§22) and the reduction of assessments in 4 of the 5 neighborhoods in 2020 Tax Roll (§23). In paragraph 24, Farbstein alleges that the 2020 tax roll contained a “clear level of non-uniformity” between similarly situated taxpayers based upon a high coefficient of dispersion (“COD”), which is a measure that ORPTS uses to determine the extent to which similarly situated homeowners may be treated inequitably. He states, without identifying the COD for the 2022 Roll, that the Town has continued to maintain these disparities.

Article 7 Proceeding Chart

Farbstein also proffers a chart that purports to show the sales of five “higher-end properties” between September, 2020 and February, 2022 that will be used in a separate Article 7 proceeding. The chart includes the dates of sales and the sales prices of the five homes, as well as the assessment before and after the sale. According to Farbstein, the chart shows significant

variations in the manner in which the assessment of each property was raised after their sale, which he maintains is another example of the lack of consistency, uniformity or equality in the Amenia residential tax toll.

Conclusion

Farbstein concludes that based upon his decades of experience, his training, his knowledge and review of the records referred to in his affidavits, that his

opinion that the method of assessment, such as it is, does not assure even rough equality among similarly situated residential properties. This was true in 2020, 2021 and it is true for the 2022 roll. There is no recognizable systematic method of valuation and/or assessment at all, and one is required to guess at what the Assessor is doing. There are gross disparities in the taxation of similarly situated taxpayers and properties, and Amenia's neighborhood system represents a grossly disparate, and illogical, treatment of residential property owners.

Respondents' Answers

All Respondents have submitted Verified Answers, each of which raises Objections in Point of Law. County Respondent's Answer includes affidavits from Catherine Weisse ("Weisse Affidavit"), the Deputy Commissioner of Finance/Director of Real Property Tax Services and Heidi Seelbach, Dutchess County Commissioner of Finance ("Seelbach Affidavit"). Town Respondents submit a Verified Answer and Objections in Point of Law, supported by an Affidavit from Respondent Donna DiPippo ("DiPippo Affidavit") and a certified copy of the 2022 final assessment roll for the Town.

DiPippo Affidavit

The DiPippo Affidavit addresses and contests the analysis and conclusions contained in the Farbstein Affidavit. DiPippo contends that the Petition should be denied because ORPTS has independently reviewed and upheld the Town's 2022 Assessment Roll. She also alleges that

Petitioners have failed to produce any competent proof in support of their claim for selective reassessment.

ORPTS Review of 2022 Assessment Roll

DiPippo has been the sole assessor for the Town of Amenia since January, 2022. She maintains that the Town's 2022 Assessment Roll was independently reviewed and upheld by ORPTS. For the 2022 assessment roll, the Town declared a 100% local Level of Assessment ("LOA"), which was reported on the tentative assessment roll. According to DiPippo, equalization rates are New York State's independent measure of checking each municipality's overall LOA. ORPTS computes equalization rates by dividing the total assessed value of taxable real property by an estimated total full value of the property in a municipality. DiPippo avers that ORPTS reviews the work of the Assessor and determines whether the stated LOA is within adequate tolerances to be used as the equalization rate. If the LOA meets certain criteria, the LOA becomes the rate.

According to DiPippo, on June 2, 2022, ORPTS established a final State equalization rate of 100% for the Town, which is consistent with the Town's stated LOA. In support thereof, DiPippo annexes the "Certificate of the Final State Equalization Rate for the 2022 Assessment Roll" from ORPTS. That document certifies that "on June 02, 2022 the State Office of Real Property Tax Services established a final State equalization rate of 100.00 for" the Town. The Certificate also contains a "Note" that because the Town's "locally stated level of assessment has been confirmed, it has been established as the final state equalization rate pursuant to RPTL § 1211."

DiPippo states that because ORPTS independently verified that the Town assessed all property at 100% value for the 2022 Assessment Roll, that “in and of itself shuts down” Petitioners’ argument that the 2022 assessment roll is deficient. DiPippo further believes that Farbstein presents no evidence that impairs the independent validation of the Town’s 2022 assessment roll by ORPTS.

Response to Farbstein Affidavit

After her review of the Farbstein Affidavit, DiPippo concludes that his sole contention is that there is no consistency or uniformity of assessment in 90 properties in the Silo Ridge development, also referred to as Neighborhood 5.² She describes Silo Ridge as a high-end subdivision with single family residences and condominiums, that is still under construction.

DiPippo notes that the Neighborhood 5 Chart is devoid of any property owner names, addresses or grid numbers. However, because there are 90 properties contained on the chart, her “best guess” is that these properties consist of following three categories: (1) single family residential (34 properties); (2) single family residential with in-law suites (20 properties); and (3) condominiums (36 properties).³

Based upon her assumption that the properties reflected on the Neighborhood 5 Chart are made up of these three categories, DiPippo concludes that the Chart is unreliable. First, she asserts that Farbstein improperly compares condominium assessments (36 of the 90 properties) with single family residential assessments. DiPippo avers that single family residential properties and condominiums are assessed using different methodologies, and that condominiums are

² The DiPippo Affidavit includes two footnotes indicating that Mr. Farbstein concedes a “somewhat relative assessment consistency” in neighborhoods 1 and 2.

³ DiPippo notes that there are 212 properties in Neighborhood 5 but 122 parcels are vacant land and parcels owned by the developer.

assessed below sales price and are not market value assessments. Therefore, she opines that the Neighborhood 5 Chart improperly compares the assessments of these properties.

DiPippo further states that the Neighborhood 5 Chart is flawed because it includes partial assessments. Structures that are partially built are assessed at the percentage of completion as of March 1, 2022, and such structures will be assessed much lower than a completed structure. According to DiPippo, for the 2022 Assessment Roll, 22 of the 90 properties in Neighborhood 5 were partial assessments. DiPippo believes that the inclusion of partial assessments and condominium assessments yields skewed data and further invalidates the Neighborhood 5 Chart. In short, DiPippo contends that the Chart is of no evidentiary value because of the foregoing, as well as Farbstein's failure to identify the properties analyzed and the inventory considered for each property.

Selective Reassessment

DiPippo asserts that assessment only requires "rough equality" and that Petitioners bear a heavy burden to establish lack of consistency or uniformity of assessments. DiPippo maintains that in order to sustain their claim of selective reassessment, Petitioners must establish facts challenging a particular methodology, policy or practice that she employed in the assessment of several properties, which resulted in gross disparities in the assessed value of similarly situated properties. She contends that no such methodology, policy or practice is identified in the Petition or in Farbstein's Affidavit. DiPippo avers that even assuming that Petitioners identified a methodology, policy or practice, the only evidence presented by Petitioners in support of their selective reassessment claim is the Neighborhood 5 Chart, which she alleges is "unintelligible, misleading, and utterly deficient."

Finally, according to DiPippo, the chart of the five (5) recent home sales represents claims of unequal assessment, which can only be raised in an Article 7 Proceeding. She argues that this chart is a highly selective sample that cannot be considered sufficiently representative of the residential portion of the assessment roll.

Based on the foregoing, DiPippo opines that Petitioners have presented no evidence to support their claim of selective reassessment and the Petition should be dismissed.

Farbstein's Reply Affidavit

In reply, Farbstein disputes that Town Respondents' contention that ORPTS has reviewed and upheld the Town's 2022 tax roll. While he concedes that ORPTS has generally accepted that the Town is assessing at 100% of value, he argues that this is not a "deep dive" into the roll as contended by Town Respondents.

Farbstein also maintains that as part of its yearly equalization process, ORPTS conducts studies to ascertain the level of assessment and also includes, as part of these studies, measures of inequality, which include COD or Coefficient of Dispersion. Mr. Farbstein avers that for assessing units such as Amenia, which is assessing at 100%, ORPTS has indicated that 17% represents the maximum COD. While Mr. Farbstein maintains that Amenia's COD should be much lower, he calculates Amenia's "most recent" COD at 17%.

Farbstein states that he did not use any partial assessments in his analysis of Neighborhood 5, but he does not provide any evidence to controvert DiPippo's assertion that 22 of the 90 properties in Neighborhood 5 had partial assessments for 2022.

Significantly, Farbstein asserts that Petitioners have "never alleged selective reassessment." Instead, he maintains that Petitioners' claim is about equal protection and the fact

that Amenia does not appear to have a real policy of assessment. In other words, “the assessment policy appears to not have any statistically valid methodology.”

Sur-Reply

Town Respondents sought, and were granted, permission to submit a sur-reply based upon what they allege are new and contradictory allegations in Petitioners’ reply submissions. Town Respondents allege that Petitioners now take the position that they do not allege a claim for selective reassessment, which is contrary to the allegations contained in the Petition. Town Respondents argue that the sole cause of action in the Petition alleges selective reassessment and that in an effort to avoid dismissal, Petitioners now assert a wholly unsupported and unspecified cause of action of a violation of equal protection for the first time in their reply papers.

Town Respondents also maintain that Petitioners allege for the first time in reply that Amenia is already at or beyond the maximum COD established by the State for the 2022 Assessment. Town Respondents contend that the Farbstein Affidavit does not calculate the COD for the 2022 tax roll and that the 17% COD referenced by Mr. Farbstein in his Reply Affidavit is from the 2020 tax roll and is therefore irrelevant to the instant proceeding.⁴ Nevertheless, Town Respondents assert that even if the 17% COD calculation applies to the 2022 tax roll, which they contend it does not, the documentation annexed to Mr. Farbstein’s Reply Affidavit shows that a 17% COD is the “norm” for the Town as established by ORPTS.

Discussion

All of the Respondents Answers raise a number of Objections in Point of Law, however they have all collectively raised the following: (1) Petitioners’ exclusive remedy was to file a

⁴ Town Respondents also point out that they previously refuted Farbstein’s 2020 COD 17% calculation with a calculation done by the State, which showed the 2020 COD as 14%.

proceeding pursuant to Real Property Tax Law (“RPTL”) Article 7; (2) the Petition should be dismissed as Petitioners fail to state a cause of action and (3) Petitioners lack standing to bring this proceeding. The Court will address each below.

Petitioners’ Exclusive Remedy is RPTL Article 7

Town Respondents and Respondents County and Webutuck raise Objections in Point of Law arguing that to the extent that Petitioners claim that the assessments of their individual properties are excessive, unequal, or illegal, their sole and exclusive remedy is a proceeding pursuant to Article 7 of the RPTL.

“Ordinarily, challenges to assessments on the grounds that they are illegal, irregular, excessive, or unequal, are to be made in a certiorari proceeding under RPTL article 7.” *Bd. of Managers of Greens of N. Hills Condo. v. Bd. of Assessors of Cnty. of Nassau*, 202 AD2d 417, 419 [2d Dept. 1994]. “However, where the challenge is based upon the method employed in the assessment of several properties rather than the overvaluation or undervaluation of specific properties, a taxpayer may forego the statutory certiorari procedure and mount a collateral attack on the taxing authority’s action through either a declaratory judgment action or a proceeding pursuant to CPLR article 78.” *Id.*

In the instant matter, Petitioners make clear that they are challenging the method of assessment of the properties in the Town, rather than the overvaluation or undervaluation of specific properties. Indeed, the Petition does not contain any allegations that the Petitioners seek a review of their individual properties. As such, Petitioners may proceed by way of an Article 78 proceeding rather than a proceeding pursuant to RPTL Article 7 and Respondents’ Objections in Point of Law on this issue are denied.

Petition Fails to State a Cause of Action

Petitioners maintain that although Respondents argue that Petitioners fail to state a cause of action, they have not made a motion to dismiss based upon said defense. As there is no motion before the Court, Petitioners argue that the Court cannot grant such relief.

However, pursuant to CPLR §7804(f), Respondents “may raise an objection in point of law by setting it forth in [their] answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer.” As each Respondent has raised an Objection in Point of Law asserting that the Petition fails to state a cause of action, the Court will consider these as motions to dismiss pursuant to CPLR §7804(f).

As an initial matter, Petitioners appear to have abandoned any claim for selective reassessment as Farbstein clearly states at paragraph 20 of his Reply Affidavit that Petitioners “never alleged selective reassessment.” Counsel for Petitioners argues that this proceeding does not “only” assert selective reassessment. Instead, Petitioners allege that the 2022 Tax Roll is illegal, irrational and unconstitutional in that the Assessor does not apply assessment factors uniformly, or equitably, and the residential portion of the tax roll reflects a lack of equal protection under the law.

While the Petition plainly refers to selective reassessment, given the definitive statement of Petitioner’s expert that a claim of selective assessment was never alleged, the Court finds that

the Petition does not state a cause of action for selective reassessment.⁵ Nevertheless, the Petition does allege that the Town's assessment of residential properties causes disparate treatment of property owners of the same type of properties in violation of the Equal Protection clause. Accordingly, the Court will next consider if Petitioners have stated a cause of action of a violation of the Equal Protection Clause.

Equal Protection

"It is well settled that in the area of real property taxation, rough equality, not complete uniformity, is all that is required." *Matter of Chasalow v. Bd. of Assessors of Cnty. of Nassau*, 202 AD2d 499, 501 [2d Dept. 1994], *lv denied* 83 NY2d 759 [1994]. "[G]ross disparities' in the taxation of similarly situated taxpayers can constitute a violation of the constitutional right to equal protection of the laws [citations omitted]." *Matter of Chasalow, supra*. "In other words, taxpayers need not be treated the same as all others; rather, similarly situated taxpayers must 'be treated uniformly' [citations omitted]." *Sullivan Farms, II, Inc. v. Assessor of Town of Mamakating*, 179 AD3d 1176 [3d Dept. 2020]. A classification between taxpayers may violate constitutional equal protection guarantees if the distinction between the classes is 'palpably arbitrary' or amounts to 'invidious discrimination' [citations omitted]." *Id.* at 1176-77.

Therefore, in order to establish a violation of equal protection in this matter, Petitioners must show that there are gross disparities in the taxation of similarly situated taxpayers or that the

⁵ Petitioners' counsel cites to cases in his reply for the proposition that a system of selective reassessment of property that has no rational basis in the law violates the equal protection clause of the Constitution. *See Matter of Carroll v. Assessor of City of Rye*, 123 AD3d 924 [2d Dept. 2014] and *Matter of Weiner v. Bd. of Assessors*, 69 AD3d 949 [2d Dept. 2010]. As Petitioner's expert specifically disclaims such a cause of action, the Court will not consider these cases.

classification between taxpayers is “palpably arbitrary” or amounts to “invidious discrimination.”

Sullivan Farms, II, Inc., supra. They fail to do so.

Although the Petition repeatedly asserts that similarly situated properties in the Town are not uniformly assessed, the submissions do not identify any specific properties that are alleged to be similarly situated, nor the manner in which they are not uniformly assessed. Indeed, although Petitioners allege that they own property in the Town, the Petition does not identify which properties they own, where the properties are located, the amount of the assessments of said properties or whether their properties are similarly situated to each other or any other property.

Neither Farbstein’s Affidavit nor his annexed charts rectify this inadequacy. First, Farbstein fails to demonstrate that there is inequality in the assessments of the properties in Neighborhoods 1 and 2. In fact, he specifically states that there is “a somewhat relative assessment consistency” in these two neighborhoods.⁶

Secondly, Farbstein fails to show that the properties in Neighborhoods 1 and 2 are similarly situated to Neighborhood 5. Based upon his Affidavit, Neighborhoods 1 and 2 consist primarily of ranches or old style homes, while Neighborhood 5 contains only contemporary homes or town houses. Noticeably absent from the Farbstein affidavit are examples that establish that properties in Neighborhoods 1 and 2 are treated differently than similarly situated properties in Neighborhood 5. While Farbstein’s Affidavit shows that the assessment per square foot in Neighborhood 5 is \$500 higher than in Neighborhoods 1 and 2, this difference is not unexpected given that Silo Ridge is a new subdivision with high-end properties.

⁶ At paragraph 22 of his Reply Affidavit, Farbstein states that the statistics regarding assessments on a square foot basis in Neighborhoods 1 and 2 are “reasonably consistent, despite a couple of expected outliers.” He further states that his Exhibit 8 shows that “all of these over 1,000 residential parcels track closely to a \$200 per square foot range.”

As Petitioners do not demonstrate that the properties in Neighborhoods 1 and 2 are similarly situated to those in Neighborhood 5, it appears that Petitioners' equal protection claim relies exclusively on alleged disparities in assessments within Neighborhood 5. Farbstein avers that the assessments in Neighborhood 5 are "all over the map" and "do not follow and equitable pattern, or theme," yet he fails to address DiPippo's analysis regarding the deficiencies in his Neighborhood 5 Chart that she alleges renders the Chart unreliable. This is particularly damaging to Petitioners' claims as this Chart is central to Farbstein's conclusions.

In her sworn affidavit, DiPippo states that many of the assessments for the 90 properties in Silo Ridge were partial assessments.⁷ As partial assessments are necessarily lower than full assessments, this can account for some of the disparities noted by Farbstein in his Neighborhood 5 chart. Further, the fact that there is not yet uniformity in the assessments in Neighborhood 5 is not surprising given that all of the residential properties therein are newly built and some remain only partially assessed.

Importantly, Farbstein also fails to address DiPippo's assertion that the 90 properties included on his Neighborhood 5 Chart consist of both condominiums and single family residential properties. He does not dispute that condominiums are assessed at less than market value. Given the difference in methodologies used in assessing condominiums and single family residences, it is likely that the inclusion of condominium assessments on the Neighborhood 5 Chart also account for some of the alleged disparities in the assessments in Silo Ridge. Accordingly, through the DiPippo Affidavit, the Town Respondents have demonstrated that to the extent that the

⁷ Given DiPippo's uncontested statement that 22 of the 90 property assessments for Silo Ridge were partial assessments for 2022, the Court is not persuaded by Farbstein's blanket assertion that he did not use any partial assessments in creating the Neighborhood 5 Chart.

Neighborhood 5 Chart shows disparities in assessments in Silo Ridge, such disparities can be explained by Farbstein's improper inclusion of condominium assessments and partial assessments.

Moreover, Petitioners fail to establish that the properties in Neighborhood 5 are similarly situated to each other. Although it is uncontested that the properties in Neighborhood 5 are all part of a high-end development, the record demonstrates that the properties consist of both single family residences and condominiums, which cannot be considered "similarly situated." Petitioners do not identify individual properties in Neighborhood 5 that are similarly situated to each other or that there is a gross disparity in the assessments of these properties. In addition, while Farbstein asserts that a high COD is an indicator of inequality in an assessment roll, Farbstein himself provides documentation that ORPTS has established 17% as the desired maximum COD for the Town. Accepting Farbstein's assertion that the Town's COD is 17%, this allegation merely establishes that the Town is within the acceptable COD as established by the State and cannot support Petitioners' allegation of gross disparities in assessment. *See Matter of Chaslow, supra*, at 501 (petitioners failed to establish constitutional infirmity in assessment methodology where there was a moderate statistical deviation from the COD norm).

Nor do Petitioners demonstrate gross disparities in the assessment through the inclusion of the Chart of the five recently sold properties. Critically, because Petitioners do not identify the neighborhoods in which these properties are located, the Chart cannot be used to support Petitioners' argument that there are gross disparities in, or among, the assessments within the five neighborhoods. If anything, this chart tends to show that the valuation of these five properties was excessive and/or unequal, "which claims strike at the equality of the Town's application of the cited methodologies and the ultimate valuations that were derived therefrom, as opposed to an

attack on the methodologies themselves.” *Matter of Groll v. Bd. of Assessment Rev. of Town of Delaware*, 183 AD3d 1156, 1159 [3d Dept. 2020]. As such, the sole avenue to obtain relief regarding these five properties is via an RPTL article 7 proceeding, *id.*, which apparently is being pursued.

Petitioners also fail to establish that Farbstein’s Affidavits from the 2020 and 2021 Proceedings can appropriately be considered by the Court for purposes of an equal protection analysis of the 2022 Tax Roll. Petitioners argue that Farbstein’s Affidavits in support of 2020, 2021 and 2022 Proceedings show inequality, without identifying the how they show a pattern of inequality. Even assuming that each of the tax rolls demonstrated some level of inequality, Farbstein does not identify a pattern of gross disparities in taxation which would be necessary for a finding of constitutional infirmity. Merely incorporating the prior affidavits, without more, does not establish a pattern of assessment inequality. The Court will not engage in a comparison of the prior tax rolls without some clear indication as to how such an analysis would establish a pattern of gross disparities in assessment and/or that the Town has a flawed methodology.

Finally, Farbstein also concludes that the neighborhood system “represents a grossly disparate, and illogical, treatment of residential property owners.” However, the submissions are devoid of any evidence that the five neighborhood distinctions are palpably arbitrary or involved invidious discrimination. Compare, *Matter of Scarsdale Comm. for Fair Assessments v. Albanese*, 202 AD3d 966, 970 [2d Dept. 2022] (petitioners sufficiently state a cause of action alleging violations of the equal protection clause by alleging that owners of large and small homes are members of the same tax assessment class, and the methodology used to create the 2016

assessment roll, in effect, treated owners of larger homes more favorably than owners of smaller homes).

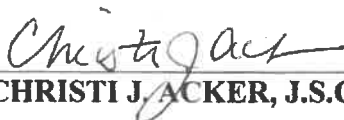
In conclusion, the Petitioners submissions fail to demonstrate gross disparities in the assessments of similarly situated properties in Neighborhoods 1, 2 and 5 or that the Neighborhood distinctions are palpably arbitrary or involved invidious discrimination. As a result, the evidence proffered by Petitioners in support of their Petition “does not meet the rigorous requirement needed to establish constitutional infirmity.” *Matter of Chaslow, supra*. Accordingly, the Court finds that the Petition fails to state a cause of action for a violation of equal protection and their Petition is denied in its entirety.

Now, it is hereby

ORDERED that Respondents’ motions to dismiss the Petition for failure to state a cause of action are granted and the proceeding is dismissed in its entirety.

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York
December 4, 2023


CHRISTI J. ACKER, J.S.C.

To: All counsel via NYSCEF