

DECISION OF HEARING OFFICER

Prepare in triplicate. Complete within 30 days of date of hearing. Send one copy each to the petitioner's representative or the petitioner if not represented, one copy to the Individual representing the assessing jurisdiction and the original and one copy to the assessment review clerk.

Date hearing held: March 19, 2018 Date decision submitted to clerk: March 19, 2018 Date Settled: March 19, 2018

PART I - CASE IDENTIFICATION

Supreme Court, County of: **NASSAU** Assessment Review Filing #: **AR7115332017** Calendar #: **1**
 Name of owner or owners: **MOZES, JOHN**
 Address: **17 STIRRUP LN**
 City/State/Zip Code: **GLEN COVE, NEW YORK 11542**
 Assessing Unit: **GLEN COVE CITY OF**
 Tax Map #: Section: **30** Block: **79** Lot: **12**

PART II - DECISION (Check 1, 2, or 3)

DISPOSITION - Check 1, 2, 3, 4, or 5

1. () Disqualified check appropriate box below:
- a.() More than three family
 - b.() Not owner-occupied
 - c.() Property not used exclusively for residential purposes
 - d.() Cooperative
 - e.() Condominium, other than a condominium designated as Class I in Nassau County or as a "homestead" in an approved assessing unit
 - f.() Did not file within 30 days of filing of final roll
 - g.() Did not file with Board of Assessment Review
 - h.() Other, state reasons

NOTICE OF DISQUALIFICATION AND RIGHT TO JUDICIAL REVIEW

If one or more of the reasons set forth in number 1a through 1h (above) is checked, this petition did not qualify for review under the Small Claims Assessment Review Program pursuant to Section 730 of the Real Property Tax Law. Pursuant to Section 733 of the Real Property Tax Law you may seek judicial review of the disqualification of this petition within 30 days of receipt of this notice.

		FINAL	CLAIMED	DECISION BY
		ASSESSMENT	ASSESSMENT	HEARING OFFICER
2. [] Unequal Assessment	Total Assessment	\$	\$	\$
3. [X] Excessive Assessment	Exempt Amount	\$ <u>494500</u>	\$ <u>370875</u>	\$ <u>486800</u>
4. [] No Change in Assessment	Taxable	\$	\$	\$
5. [] Settle pursuant to an of both parties		\$	\$	\$

COSTS

AWARD OF COSTS (Check if applicable)

 Costs of \$ 30.00 are awarded to the petitioner, to be paid by the assessing unit.

Note to the Hearing Officer: If the decision reduces the assessment by 50 percent or more of the claimed reduction in assessment, you **MUST** award the costs of \$30.00. If the decision reduces the assessment by less than 50% of the claimed reduction in assessment, you **MAY** award cost of up to \$30.00.

NOTICE OF REQUIRED ACTION BY ASSESSING AND TAXING JURISDICTIONS

This decision grants your petition in whole or in part. The assessment will be changed, if possible, before the levy of taxes, or a refund of taxes will be made within 90 day of the date of this decision. Attached is a list of the name(s) of the person(s) or department(s) in this county responsible for taking this action. Compare the names of the taxing jurisdictions listed in PART III of your petition with the names(s) listed in the attachment to determine the appropriate person(s) or department(s) to be contacted, if the need arises.

State below the findings of fact concerning the assessment, and the basis for your decision.

The 2017 City of Glen Cove Assessment roll assigns an assessed value to each parcel of land, both improved and unimproved, within the City. This Assessment Roll indicated a 6% increase in assessed values from those assigned in the 2016 Assessment Roll. The assessed value, when divided by the Level of Assessment provides the Assessor's forecast of the fair market value as of 1/2/2017 (the valuation date) for each parcel. This is also known as the equalized value for the property.

There are two issues before me in this Small Claims Assessment Review proceeding (see Real Property Tax Law Article 7 Title 1-A). First is the Residential Assessment Ratio (hereinafter ratio) or Level of Assessment (hereinafter LOA) to be utilized in determining the equalized value of the petitioner's residence and the second is the fair market value of the subject property.

The equalization rate is established in part to statistically ensure that the LOA bears a relation to reality using as evidence qualifying sales which took place prior to the valuation date. To that purpose RPTL § 738 provides that a Residential Assessment Ratio (RAR) be established to

demonstrate by recent market experience the relationship between assessed valuation and the full value. (Pace v. Assessor of Town of Islip, 252 A.D.2d 88, 91).

The ratio in question is at the core of any SCAR proceeding. It is necessary and applicable to both unequal and excessive SCAR challenges. The ratio is the relationship between the assessed value of the property and the fair market value, expressed as a percentage. Once determined, a property's assessed value is divided by the percentage found to arrive at the equalized value. The equalized value in a SCAR proceeding serves two purposes. First it is used to determine if a property

has a limitation on the reduction it may receive. Those properties with an equalized value of over \$450,000 are limited to a maximum reduction of 25%. All other properties have no such limitation¹. This equalized value is also used for comparison to the fair market value established at the hearing in order to challenge or defend the assessed value assigned by the City of Glen Cove to the subject property for the 2017 real property tax year. A petitioner who fails to establish a value less than the equalized value is not entitled to a reduction. A petitioner who establishes a value less than the equalized value is entitled to have his or her assessed value reduced to an amount determined by multiplying the market value found, by the ratio to be applied.

The provisions of Art 7-1-A do not provide guidance in determining how a ratio is to be computed. Section 720(3)(b)(2) applicable to an Article 7 “unequal” certiorari claim does. That section provides that an acceptable means of proving ratio is with

actual sales of real property within the assessing units that occurred during the year in which the assessment under review was made.

Among the significant factors to be considered in any ratio study are those of the period of time used and the nature of the data to be included. The holding in Matter of John Markus, V. Assessors of the Town of Taghkanic, 24 A.D.3d 1066, 806 N.Y.S.2d 295, 2005 N.Y. Slip Op. 09788, (citing to a position adopted by ORPS), indicates that the period to be utilized with respect to actual sales must be the 12 month period immediately preceding the tax status date. Significantly, the term “actual sales” was not defined nor even discussed. In my opinion, the term actual sales does not refer to trending or actual price, but rather the type of transaction - arms length or “filtered sales”. I find that the term actual sales relates to the filtering process used in selecting data which includes but is not limited to sales with no price, sales without an improved land use code² and sales coded as invalid³.

The state agency chargeable with overseeing the levels of assessment and testing an equalization rate is the Office of Real Property Tax Services (ORPTS). With the statute silent as to the

¹ However, all properties are limited to the amount requested on the complaint.

² This eliminated vacant land and vacant land with small improvements.

³ This category included multiple parcel sales, not open market sales, change since sale, related party sales, foreclosures, land contract or abnormal financing, excess personal property and low price unvalidated sales.

issue of time trending, I looked to ORPTS for guidance. ORPTS published Level of Assessment Determination: An Owner's Manual for Maintaining Uniformity (Revised August 2010) to guide assessors in determining the LOA. The manual explains the four step process in determining the LOA. After obtaining and grouping the data, the data is analyzed and the results are validated. ORPS discusses the importance of time trending the data in several different sections of the manual,⁴ and explains that

[t]ime trend analysis involves a study of market trends over the time frame covered by the data and the adjustment of sales prices to the assessment date (or as close thereto as practical) based on the observed rate of change. (P. 3).

In arriving at an appropriate ratio, underlying sales data must be adjusted to reflect for time of sales, and an appropriate ratio should be arrived at on the basis of time adjusted sales conducted during the full year preceding the valuation date.

ORPTS requires that in determining the equalization rate the tax status date be moved back six months to July 1 of the preceding year. This causes the sales pool to consist of sales some six to eighteen months prior to the actual tax status date rather than the more appropriate twelve months prior. I believe that this requirement, makes time trending even more significant.

The study presented by the City did not trend the sales, stating that the market was flat, even though there was a 6% increase in the assessed values. When an assessment roll does not change from one year to the next (except for changes resulting from, among other things, SCAR or tax certiar decisions, new construction and demolition) the roll stays in line with market values through the LOA. As market prices increase the LOA decreases since the median total assessed value remains relatively the same and is divided by a greater median time adjusted sale price. However when the roll as a whole is adjusted to reflect a change in market values, I don't see how the sales are not time adjusted to reflect

⁴ The manual states:

When market values are changing, time adjustments are essential in order to convert selling prices to a common denominator; otherwise they will not reflect the target date of the analysis and will lead to misleading results." (P.3).

time trend analysis is essential in order to determine the appropriate equalization rate as of the assessment date; otherwise calculated measures of the assessment level will reflect the approximate midpoint of sales used in the analysis. (P. 8).

[a] sales ratio study comparing assessments with TASP [Time-adjusted sales prices] is used to determine the equalization rate. When prior year assessments are used, the results indicate the amount of adjustment that must be made to achieve 100% of whatever the target rate is. (P. 12).

the change, especially when using the sales parameters defined by ORPTS which are 12 to 18 months old. ORPTS indicated that their analysis time trended the sales, albeit only slightly.

While the ORPS study found a ratio of .9545, it nonetheless approved the 100% ratio utilized by the City. This seemingly inconsistent result is explained by ORPS' long standing practice of allowing a 5% level of "tolerance" or deviation. (See RPTL §738(1)(b)). I find that while ORPS' decision to approve the 100% ratio, even though its weighted mean was 95.45%, may be justified from a statistical standpoint, it does not provide substantial justice to the parties.

The valuation of residential real property is not and cannot be an exact science. Three essential elements in this field are the assessed value assigned, the established market value and the ratio at issue. The assignment of the assessed value can rarely be achieved with certitude. The Legislature saw the subjective nature of the assessment process and provided checks and balances to it through ORPTS oversight, SCAR and certiorari proceedings. The inexact nature of the valuation process holds true at the informal SCAR hearing stage where proof is almost exclusively premised on a party's comparable sales. In an ideal world both parties would submit the same comparables. Unfortunately, this rarely occurs since each side has its subjective view as to what represents a proper comparable supporting its position. This subjectivity carries over to the adjustment process utilized to equate properties and sale prices. Adjustments are made for time, square footage, lot size and specific amenities (such as a pool or in the high end properties, tennis courts), allowance for which may differ among the parties. A degree of selectivity is also present in the preparation of a ratio. Such studies are based upon "filtered" data and time trends which may differ from expert to expert. In such a context a hearing officer must consider the available evidence and perspicaciously determine market value. Under the circumstances, it is not without significance that a hearing officer is chargeable with doing substantial justice in reaching his or her decision. (RPTL §732(1)).

The 5% tolerance level becomes even more significant here where ORPTS found the weighted mean to be 95.45%, and the time trending was most likely under trended. A greater trend would clearly have taken the weighted mean out of the 5% tolerance. In addition, the City's expert acknowledged that when the sales one year prior to the tax status date were used instead of the older sales, the weighted mean was slightly over 95%, and it is unlikely that the sales were time trended.

ORPTS, not being a party to this action, has more likely provided the most objective results. While I believe the LOA would be lower had proper time trending been performed, I find that the use of 95.45% as the LOA will provide substantial justice to the parties. Accordingly, the ratio that I will utilize in the SCAR proceedings assigned to me will be 95.45%.

The Subject has an assessed value of \$494500 which equalizes to an assessed market value of \$518000. Petitioner established the right to a reduction to an assessed value of \$486800.



Name and Address of Hearing Officer

ELIZABETH L. ROSENBLUM, ESQ.
NASSAU COUNTY SUPREME COURT
100 SUPREME COURT DRIVE
MINEOLA, NY 11501