SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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GARY BROXMEYER AND LISA BROXMEYER,

Petitioners,

-against-

THE BOARD OF ASSESSORS AND/OR THE ASSESSOR OF THE VILLAGE OF UPPER BROOKVILLE AND THE BOARD OF ASSESSMENT REVIEW,

Respondents.

For a Judgment pursuant to CPLR Article 78

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MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 12
Index No.: 8726/10
Motion Seq. No.: 01

DECISION AND ORDER

Papers Read on this Motion:

Petitioners' Notice of Petition and Petition	01
Respondents' Affirmation	xx
Respondents' Verified Answer	xx

Petitioner, Gary & Lisa Broxmeyer, seeks a judgment, pursuant to Article 78, vacating the decision of the Small Claims Hearing Officer, Elizabeth Rosenblum, dated January 15, 2010, and remanding the petition to a Hearing Officer for a new Small Claims Assessment Review (SCAR) hearing for the 2009-2010 tax year, together with costs and disbursements. Respondents, THE BOARD OF ASSESSORS and THE ASSESSMENT REVIEW OF THE VILLAGE OF UPPER BROOKVILE (hereinafter referred to as the "Village"), oppose the motion which is determined as follows:

Background

The Petitioners, the Broxmeyers are the owners of a one-family structure located at 967 Ripley Drive, Upper Brookville, New York, designated on the Nassau County tax roll as Section 24, Block C, Lot 132. The Broxmeyers seek to challenge the tax assessment of their property and commenced a SCAR proceeding, on 4/1/09, pursuant to Article 7 Title 1-A of the Real Property Tax Law (RPTL). The Petitioners relate that by decision dated January 15, 2010, Hearing Officer Elizabeth L. Rosenblum,

Esq. determined the assessed value of the subject property for the 2009/2010 tax year.

Petitioners originally submitted evidence to support their request for a reduction in assessment, which was reduced to $8,050.00. After the hearing Ms. Rosenblum found that:

> The subject property was then assessed at $8,688.00, which translates into an assessed market value of $3,777,391.00.
>
> An adjustment is warranted.
>
> The parties differ in ["Gross Living Area"] GLA by about 2100 sq. ft. The explanation given by petitioner's appraiser, who measured the home, was that the excess GLA was in part due to a 2-story basketball court in the basement. It can't however be ignored. Both parties adjust GLA at $125 per sq. ft. I have taken the difference in their GLA and adjusted at $50 per sq. ft. Thus, increasing petitioner's values by $105,000 and reducing respondent's values by $157,500. The adjustments with respect to the agreed upon GLA remain at $125 per sq. ft.
>
> The best evidence of market value as of the valuation date are petitioner's adjusted comps #3 and 4 and respondents' adjusted comps #2 and 3. When averaged, placing greater weight on those sales which most closely approximate the valuation date, GLA and location, such sales indicate a market value of $3,500,000.00 which equates with an assessed value of $8,050.00.

The petitioner argues that the appraisal submitted should have resulted in an assessment of $6,440.00 In opposition to the petition, the Village asserts that "the Hearing Officer had a rational basis for her decision, which is clearly set forth, and, thus, is not arbitrary, capricious, or an abuse of the Hearing Officer's discretion."

The Law

The Real Property Tax Law provides that the hearings held pursuant to the SCAR procedure are to be conducted on an informal basis to do substantial justice, and the Hearing Officer is vested with wide discretion. The Hearing Officer "shall consider the best evidence presented." Real Property Tax Law §732 (2). When the determination is contested, the Court is limited to ascertaining whether the determination has a rational basis (*McNamara v Board of Assessors of Town of Smithtown*, 272 AD2d 412, [2d Dept 2000]; *Matter of Barbera v Assessors of Pelham*, 278 AD2d 412, [2d Dept 2000]), or if

the determination is "arbitrary and capricious." (*Matter of Pell v Board of Education*, 34 NY2d 222, [1974]). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *Matter of Pell v Board of Education, supra.*

Rosenblum's January 15, 2010 decision which is the subject of this proceeding recognized that the parties had a dispute with respect to the quantity and quality of the gross living area at the premises and how that might affect the value of the premises. She took a reasonable approach by taking the difference in the gross living area of the premises involving the basketball court and reducing the value of such square footage from $125 per square foot to $50 per square foot.

Furthermore, square footage alone is not determinative of value. Factors such as age, style, quality of construction, condition and site size and location also have a great bearing on value. *Moyer v Town of Greece*, 188 Misc. 2d 1; 724 NYS 2d 289 (Sup. Ct. 2001). Rosenblum reached her decision by using adjusted comparables of both the petitioners and those offered by respondents and allowed a fair reduction in the assessed valuation of the subject premises.

Therefore, Rosenblum's decision had a rational basis requiring denial of the petition *Lauer v Board of Assessors*, 51 AD 3d 926 (2d Dept 2008) and must not be disturbed.

Conclusion

Based upon the foregoing, it is hereby

ORDERED, that petitioner's motion is **denied**.

All further requested relief not specifically granted is **denied**.

This constitutes the Decision and Order of the Court.

DATED: September 24, 2010
Mineola, N.Y. 11501

ENTER:

HON. MICHELE M. WOODARD
J.S.C.

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