

**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF ALLEGANY**

Cuba Lake Committee for Fair Assessments,  
Harry W. Keeley, and Harry W. and Cynthia L.  
Keeley Joint Revocable Trust, **Petitioners**

DECISION & ORDER

vs

Town of Cuba, Assessor of the Town of Cuba,  
Ryan Reed, in his Official Capacity as Former Assessor  
of the Town of Cuba, Russ Heslin, in his Official Capacity  
as Assessor of the Town of Cuba, the Town of Cuba  
Board of Assessment Review, Village of Cuba,  
Cuba-Rushford Central School District, and the County  
of Allegany, **Respondents.**

Index No. 50115

**APPEARANCES**

Monaco Cooper Lamme & Carr, PLLC, Norah Murphy, Esq., Jacob Lamme, Esq., and Laura  
Gulfo, Esq., for Petitioners

Bengart & DeMarco, LLP, A. Peter Snodgrass, Esq., for Respondents

Mark Smith, Esq., for Respondent Allegany County

**BACKGROUND**

This proceeding is a tax relief proceeding brought under Article 78 of the CPLR. Petitioners are real estate holders within the Town of Cuba (“Town”). They seek to have this Court declare unenforceable the Town of Cuba’s 2023 Final Assessment roll, and to reinstate the 2022 roll. Petitioners argue four primary points:

1. The Town did not properly utilize Land Rate tables, thus creating an impermissibly unequal tax assessment among the properties in the differing neighborhoods within the Town of Cuba;

2. The Town used a capricious methodology for assessment of properties within zone 50 (lakeshore properties);
3. The Town did not have a lawfully constituted Board of Assessment Review (“BAR”) and as such all decisions by that body are void;
4. The actions taken by the purported Board of Assessment Review were unequal and improper, insofar as the petitioners claim the BAR denied 90% of the area 50 appeals but denied only 10% of non-zone 50 appeals, despite lack of supporting evidence and paperwork within the latter.

Because the petitioners are arguing constitutional issues in the alleged disparate treatment of the property owners, an Article 78 proceeding by petition is the proper format to raise the issues. *See, Siegel, Special Proceedings, sec 547 et seq.* The questions to be addressed in the context of this proceeding are limited by those permissible under CPLR 7803. Specifically, this Court must resolve whether Respondent(s) made an incorrect determination under CPLR 7803(3): a determination in violation of lawful procedure, affected by an error of law, arbitrary and capricious or an abuse of discretion. A judgment may be made by this court in favor of the petitioner if Respondent has not provided countering facts, CPLR 7804(e), or in favor of the respondent if the petitioner has not supplied sufficient facts to meet its burden. *Matter of Gram v Assessors of the Town of Cuba*, 92 AD3d 1248 (4<sup>th</sup> Dept., 2011). The Court may also hold a trial if a triable issue of fact is presented. CPLR 7804(h).

## LAW

A tax roll duly submitted is presumptively valid. *Matter of Abele v. Dimitriadis*, 53 AD3d 969 (3<sup>rd</sup> Dept., 2008). To avoid dismissal of the petition, Petitioners must show strong evidence of over-valuation, more than merely cursory affidavits. *Id* at 971. Assessments are invalid if they

are “excessive, unequal or unlawful”. *Matter of City of Troy v. Assessor of the Town of Brunswick*, 145 AD3d 1241 (3<sup>rd</sup> Dept., 2016). Unlawful assessments include assessments which run afoul of the constitution, such as reassessments with no rational basis for the assessment. *Id* at 1243. *See also*, *Matter of Columbus/Amsterdam Associates v Tax Commission of City of New York*, 2008 NY Misc. LEXIS 8938; 2008 NY Slip Op 30934(U) (New York County, March 10, 2008). Assessors are required to use a “legally recognized factor such as improvements to the property or equal application to all properties of similar character”. *Matter of Harris Bay Yacht Club, Inc. v. Town of Queensbury*, 68 AD3d 1374, 1375 (3<sup>rd</sup> Dept., 2009). Real estate must be assessed at a “uniform percentage”, *Adams v Welch*, 272 AD2d 642, 643 (3<sup>rd</sup> Dept., 2000), more specifically, real estate within assessing unit or classification. *Matter of Sullivan Farms, II, Inc., v Assessor of the Town of Mamakating*, 179 AD3d 1176 (3<sup>rd</sup> Dept., 2020). Otherwise, the assessment will raise Constitutional concerns.

In the Harris Bay case, *Matter of Harris Bay Yacht Club, Inc. v. Town of Queensbury*, 68 AD3d 1374, 1375 (3<sup>rd</sup> Dept., 2009), the assessor had taxed a local marina as a condominium complex because Plaintiff’s marina sold its boat slips rather than rented them. The Third Department held that the assessment was unlawful. The Town’s taxation of Plaintiff’s marina in the same class as condominiums rather than in the same class as the other marinas was selective reassessment and “arbitrary”. Comparatively, in *Montgomery v Bd of Assessment Review of the Town Union*, 30 AD3d 747 (3<sup>rd</sup> Dept., 2006), the assessor had assessed Plaintiff’s newly built homes at their current market rate. The Supreme Court dismissed the plaintiff taxpayers’ action, finding that the assessments were not excessive or unequal and were made utilizing a rational basis. Upon appeal, the Third Department upheld the trial court’s first finding, but held that the methodology of the assessor was incorrect. The assessor had used current market value for the new homes but not for the homes already in existence, which effectively created two different “classes” of residential properties. This resulted in disparate treatment among the properties and therefore an impermissible unequal assessment.

## DECISION

Here, Petitioners have raised multiple issues with the Town of Cuba's 2023 assessment. Petitioners have submitted multiple arguments regarding their claim. Though the legal work is extensive, the arguments can be boiled down into two primary points. First, the assessment is arbitrary when comparing Section 50 to other zones within the town, and it is excessive due to the Town's failure to take into account the novel legal nature of Plaintiff's homes. Second, the Town's assessment review process was unlawful due to improper constitution of the Board of Assessment Review and disparate treatment among zones by the Board of Assessment Review.

### Arbitrary Assessment

As to the first point, Respondents concede that they did not utilize land rate tables in computing the assessment. As if in explanation, Respondents clarify that the land itself was valued at \$0 and the assessments did not take into consideration any value attributable to the land itself. Still, Respondent's argument does not solve the arbitrary nature of the assessments. After all, a \$500,000 home on a \$100,000 lot is not worth the same as a \$500,000 home on a \$100,000 leased lot. Subtracting the value of the land from the assessment does not rectify that differential. To the extent that the Town of Cuba's townwide re-assessment fails to adequately address that ownership differential, Petitioners' argument that the assessment roll is arbitrary is established.

This is not to say that this Court adopts Petitioner's argument that they are "merely" tenants and ought not to pay taxes at all. Not only has this matter already been addressed, *Gram v Assessors of Town of Cuba*, 92 AD3d 1248, 2012 NY Slip Op 01042 (4<sup>th</sup> Dept., 2012), but it fails to take into account the fact that, if the land reverted back to New York State, the value of the improvements thereon would certainly raise issues in equity or eminent domain as to Petitioners' compensation therefore. See, *Matter of Queens W. Dev. Corp.*, 121 AD3d 903 (2<sup>nd</sup> Dept., 2014). This Court cannot accept any arguments that Petitioners' properties have no value because of

their novel legal nature. Especially where there is clearly a robust market for such properties. New York Public Lands Law §19 does not mandate the adoption of petitioners' argument that their properties are not subject to tax. This Court's reading of the statute is that it is limited to addressing *ad valorem* assessments for communal improvements rather than general town assessments.

As part of their 'arbitrary' argument, Petitioners also argue that the Town of Cuba has no verifiable way to assess the lot size/ land use rights and boundaries without a survey, tax map and GIS plotting included in the assessment. RPTL 502 only requires a land description, one that is adequately sufficient to allow a prospective buyer to locate a more detailed description. *Peo. ex rel Upstate Tel Corp v Eaton*, 185 Misc 396, 398 (1945) ("a man of ordinary understanding, honestly seeking for information, would have no difficulty" in determining the property assessed). *See also, Matter of Better World Real Estate Group v. New York City Dept. of Fin.*, 122 A.D.3d 27 (2<sup>nd</sup> Dept., 2014). The Town's usage of a roughly descriptive tax map of leasehold properties satisfies the statute. However, because the land itself is not being valued, the value of the assessment of zone 50 properties lies in improvements, size, location and water access among other considerations. Therefore, the nature, character and location of the property rights assessed is what is "essential" *Peo v ex rel Adirondack Power & Light Corp v Durey*, 123 Misc 111 (1924). Though the statute is satisfied, the assessment process reveals an overall framework of not considering the value of the petitioners' homes based upon the leased lots on which they sit. It underscores Petitioners' argument of arbitrariness.

The Court agrees with Respondents that the higher increase in value within certain 'zones' of real estate is not *ipso facto* arbitrary. It is eminently foreseeable and completely within constitutional tolerance for the zone 50 properties to increase in value more than the properties in other zones within the town. Petitioners' argument otherwise conflates 'uniform percentage of value' with uniform value. If the properties in zone 50 appreciated 110% since the last reassessment, and the properties in other zones only appreciated 90%, using the new figures does not create an inequitable assessment. In fact, a full market value assessments of all properties within the town

of Cuba would ensure that all properties are assessed fairly. Petitioners may raise a cognizable claim in this proceeding with whether their properties have been accurately assessed at fair market value, but not with the consequences of unequal appreciation within differing property zones within the town.

### **Board of Assessment Review**

Petitioners' second argument centers upon the constitution of the Town's Board of Assessment Review (BAR). The Court agrees with the petitioners that the BAR of Cuba was acting *ultra vires* due to the fact that no quorum of duly qualified, trained and appointed members of the BAR was convened to hear grievances. RPTL523 (2)(c). As such, the Town of Cuba was required pursuant to RPTL 527 to substitute the County Treasurer, Chair of the County Legislature and the Clerk of the County Legislature as the Town's BAR. RPTL 523 is not an antiquated pedantic regulation. The statute was updated in 2019, with the same provisions included. It sets forth the proper confirmation of a quasi-judicial body, which presides over questions of tax fairness. Without a showing of compliance with the statute, Petitioners were denied a fair hearing, potentially rendering the entire assessment roll unbalanced and unequal.

Petitioners have also raised claims of disparate treatment by the Town's BAR, an argument which is rendered moot due to the above determination that the BAR lacked authority to render decisions at all.

### **Conclusion**

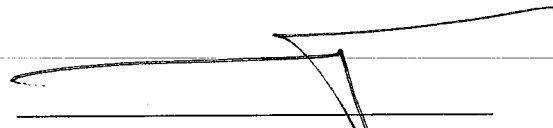
Petitioners have brought sufficient arguments, supported by affidavits, to overcome the presumption that the 2023 assessment roll was valid. There are too many issues shown to be present in the 2023 assessment process. Petitioners are therefore entitled to a judgment that the respondents acted arbitrarily in certifying the 2023 roll. CPLR 7803(3).

Therefore it is hereby

ORDERED that the 2023 Town of Cuba Assessment Roll is declared null and void, and the 2022 Assessment Roll shall be reinstated, until such time as the Town performs a new reassessment.

So ORDERED.

July 15 2024

  
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Hon. Terrence M. Parker, AJSC

**GRANTED**  
*July 15 2024*  
*[Signature]*  
COURT CLERK