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EDITOR'S PICK

TOPICAL

Court determines 2023 Cheektowaga property assessments were legal

Natalie Brophy

Feb 11, 2024

The controversy over property assessments in Cheektowaga continues, as a State Supreme Court justice last week dismissed a lawsuit brought against the town over the method the municipal assessor used to determine property values last year.

The court determined the process the assessor used was not unlawful, according to the ruling issued by acting Supreme Court Justice Mario A. Giacobbe.



Cheektowaga attorney again sues town over property assessments

Cheektowaga resident and attorney Gary Borek **filed the lawsuit** in May on behalf of himself and two other Cheektowaga property owners, arguing the method used by the town resulted in “inequitable and unfair” tax distribution.

According to the ruling, Cheektowaga’s assessor used a process known as “non-reappraisal reassessment” to determine property values.

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Under this method, New York State provided the assessor with a statistical analysis that indicated the town’s 2022 full market values were 9.891% below current market trends.

Based on that, the assessor set the full market value for each property by applying a uniform percentage of 9.891%. To determine the assessed value of each property, the assessor applied an equalization rate of 91% to the 2022 full market value, according to the court.

Full market value is the price at which a buyer would purchase a piece of property and assessed value is the dollar amount assigned to a parcel for property tax purposes.

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FILED: ERIE COUNTY CLERK 02/02/2024 10:56 AM

NYSCEF DOC. NO. 64

INDEX NO. 805807/2023

RECEIVED NYSCEF: 02/01/2024

At a Special Term of the Supreme Court
of the State of New York, held in and for the
County of Erie, at the Courthouse, 50 Delaware
Avenue, Part 34, Buffalo, New York, on the 1st day
of February, 2024

HON. MARIO A. GIACOBBE, J.C.C.
ACTING NEW YORK STATE SUPREME COURT

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

**GARY BOREK, individually and on behalf of all others
similarly situated**

Petitioner,

v.

**TOWN OF CHEEKTOWAGA, and JILL M. MURPHY
in her official capacity as Assessor for the Town of
Cheektowaga**

Respondents,

Index No.: 805807/2023

DECISION and ORDER

**KAROLYN KOWALSKI and ERIC P. CIESLAK,
Individually and on behalf of all others similarly situated**

Petitioners,

v.

**TOWN OF CHEEKTOWAGA, and JILL M. MURPHY
in her official capacity as Assessor for the Town of
Cheektowaga**

Respondents,

Index No.: 805911/2023

DECISION and ORDER

Gary Borek, Esq.
Attorney for Petitioners

Daniel Spitzer, Esq.
Attorney for Respondents

Next, the assessor reported the equalization rate to the state Office of Real Property Tax Services, which informed the assessor that the town's 2023 residential assessment ratio would also be 91%.

The town conducted a mass property appraisal and applied the 9.891% to all full market values. Then, the assessor applied to 91% equalization rate to the full market value, according to the court.

The state accepted the town's equalization rate in May.

Borek said the town should have first determined the full market value of each property as of July 1, 2022, and then applied a uniform percentage to arrive at the total assessed value.

“According to the town, the Walden Galleria, and the little two-bedroom bungalow home on the west side of Cheektowaga on the border of the City of Buffalo both went up exactly the same percentage in value,” Borek said. “It's nonsense.”

Determining property values in Cheektowaga has been a long, fraught process over the past five years.

A property assessment is one of the factors used by local governments and school district to determine the amount of property taxes. A reassessment is generally done to ensure that all properties in a community are given an accurate value. When that is done, the equalization rate – which also helps determine a tax bill – is set at 100%.

In 2019, town leaders flip-flopped over whether to do a reassessment, with the Town Board voting to conduct a reassessment, then **canceling it**, then **voting in favor** of it again – all within seven months.

Reassessments were scheduled for 2020, but **put on hold due** to the Covid-19 pandemic.

Properties were finally reassessed in 2021, much to the outrage of residents who feared their taxes would increase. Many property owners filed grievances to challenge their assessments.

The town had not previously done a full reassessment since 2014.

Cheektowaga residents livid over reassessment

In 2022, the town conducted another reassessment, which apparently was a surprise to then-Supervisor Diane Benczkowski. Residents flooded Town Board meetings, demanding the town cancel the reassessment, but the board said it was too late to stop them.

The town did not conduct a reassessment in 2023, the year Borek's lawsuit focused on.

Borek said he plans to appeal the court's decision and is confident the ruling will be reversed.

"It's completely wrong," Borek said of the ruling. "It's a failure to read the state law correctly."

Meanwhile, Daniel Spitzer, an attorney with Hodgson Russ who represented the town in this case, said the court's ruling is proof that the town assessor – who left her position last year – did nothing wrong.

"I think that the (town) board should be very proud of the two assessors that it had, which put up with a lot of accusations," Spitzer said. "In fact, those accusations were, as proven by the court verdict, unfounded. The methodology employed by the town is set out by the state of New York. The state of New York makes the rules and the state does not dictate any particular methodology that must be employed, as the court states specifically in its opinion."



By Natalie Brophy

Reporter