

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack

Justice

_____ x

**TRIAL/IAS, PART 18
NASSAU COUNTY**

In the Matter of the Application of

DIANE ECKEL,

Index No. 610929/19

Petitioner(s),

**For a Judgment pursuant to Article 78 of the
CPLR,**

**Motion Seq. No.: 001
Motion Submitted: 12/5/19**

-against-

**NASSAU COUNTY and NASSAU COUNTY
ASSESSMENT REVIEW COMMISSION,**

Respondent(s).

_____ x

The following papers read on this motion:

Notice of Petition/Supporting Exhibits/Memorandum of Law.....	X
Answer/Objections In Point of Law.....	X
Reply Memorandum of Law.....	X ¹

Petitioner, Diana Eckel, a resident and homeowner in the County of Nassau, petitions this court, pursuant to CPLR Article 78, for an order directing Respondents, Nassau County (the County) and the Nassau County Assessment Review Commission

¹At the parties' request, the court held oral arguments on December 5, 2019.

(ARC) to respond to a Freedom of Information Law (FOIL) request. Respondents oppose the petition.

This matter involves the manner in which the County assesses home values, and how homeowners can challenge that assessment. In general, the Department of Assessment sets an assessed value for a home. If the homeowner is dissatisfied with that assessment it can be challenged (grieved) and the ARC will review it. If the homeowner is still dissatisfied, the homeowner can have a Small Claims Assessment Review (SCAR) hearing. The within matter deals with the ARC process and decision-making regarding Eckel's property.

Eckel is under the impression she is being singled out for some reason. On the other hand, she acknowledges that she has "an unusual house. It's large and old and it's just different...". Each year, she challenges her assessment, or files a grievance. Because her house is different, it is harder for her to get comps, which are similar houses whose assessment and value she can compare to her house for the purpose of arguing what her assessment should be. For the tax year 2016/2017, and 2017/2018, she managed to find usable comps, and she was able to lower her assessment and pay less property taxes. Thereafter, she was told those comps were too old, and her assessed value increased, as did her property taxes. When she grieved the assessment, ARC denied her grievance.

Eckel became convinced she was being treated differently than everyone else. She claims the houses on her block and in her neighbor were all getting reductions while her

value continued to increase. It is her opinion that ARC does not use comps for her at all, but instead simply increases her assessment. As a result, she filed a FOIL request seeking to see the comps that ARC used in denying her request for a lower assessment.

The County denied the FOIL request, citing to Pubic Officers Law §87(2)(g), which holds:

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

(g) are inter-agency or intra-agency materials which are not:

- i. statistical or factual tabulations or data;
- ii. instructions to staff that affect the public;
- iii. final agency policy or determinations;
- iv. external audits, including but not limited to audits performed by the comptroller and the federal government;

The purpose of this exception is to protect the deliberative process so that government employees acting in an advisory role would feel free to express opinions to decision-makers. (*Xerox Corp. v. Town of Webster*, 65 NY2d 131 [1985]).

Eckel argues she is not seeking any information on how the comps were used, or what deliberative process ARC commissioners used to reach their determination. She solely wants to see the comps they relied upon. The County argues that the choosing of the comps were part of the deliberative process, and that giving Eckel access to them, would, in essence, open the door to further questions about how the comps were chosen. The court has no such concerns. To the extent ARC relied upon comps to make its

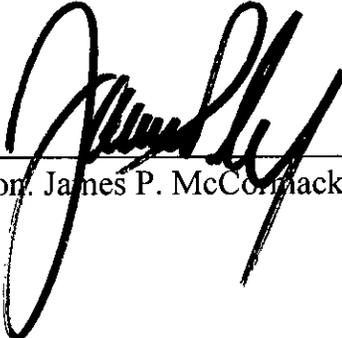
determination in Eckel’s grievance, they are akin to “statistical or factual tabulations or data”, specifically, factual data. The court does not see how providing the comps will in anyway infringe upon the deliberative process. Eckel is not, and would not be, entitled to any information that would indicate why ARC chose the comps, and how these comps assisted them in reaching a determination. The comps themselves, however, are factual data. They contain information about houses, such as the size of the plot, the number of rooms, the square footage of the property, and, of course, the value of the home. The court disagrees that this information would allow Eckel access to ARC’s deliberative process.

Accordingly, it is hereby

ORDERED, that Eckel’s petition is GRANTED. ARC is directed to provide Eckel with the comps sought in her April 3, 2019 FOIL request within 30 days of being served with notice of entry of this order.

The foregoing constitutes the Decision and Order of the Court.

Dated: February 20, 2020
Mineola, N.Y.



Hon. James P. McCormack, J. S. C.

ENTERED
FEB 20 2020
NASSAU COUNTY
COUNTY CLERK’S OFFICE