

**MEMORANDUM DECISION**

**Supreme Court, Nassau County, IAS Part 3**

1045 NORTHERN BOULEVARD ASSOCIATES,

**HON. STEPHEN A. BUCARIA, J.S.C.**

**INDEX NO. 400482/06**

Petitioner,

-against-

COUNTY OF NASSAU,

Respondent.

**DECISION AFTER TRIAL**

The Court notes that this matter has been postponed by both parties several times for the purposes of settlement. The Court has been notified that no settlement is forthcoming and therefore issues this decision.

This is a consolidated proceeding commenced pursuant to Real Property Tax Law (hereafter "RPTL") Article 7 by petitioner, 1045 Northern Boulevard Associates, to review the assessed values promulgated by respondent, the Board of Assessors of the County of Nassau, on the property identified as Section 6, Block B-05, Lot 429 and located at 1045 Northern Boulevard, Flower Hill, NY 11576. The tax years at issue for judicial review are 2002/03 — 2007/08 (taxable status date January 2, 2002 to 2007/08).

The subject property is used as a car rental facility and to store automobiles from the adjoining car dealership. It consists of a land area of approximately 39,050 square feet, of which approximately 29,600 square feet is zoned for business uses. The site is improved with an office/sales building with a rear storage area with three overhead doors. The building comprises approximately 1,488 square feet. The site is also improved with asphalt paving beyond the building; however a rear portion zoned residential is not paved. Petitioners use the income capitalization method to derive the market value of the subject property and respondents use the sales comparison method.

It is widely held that a recent sale is considered the best evidence of a property's value. Matter of William Lia v Town of Niskayuna, 300 A.D. 2d 876, 877, (N.Y. App. Div., 3<sup>rd</sup> Dept., 2002) (citing

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Matter of Allied Corp. v Town of Camillus, 80 N.Y. 2d 351, 356, 590 N.Y.S. 2d 417, 604 N.E. 2d 1348, Matter of New Cobleskill Assoc. v Assessors of Town of Cobleskill, 280 A.D. 2d 745, 747, 720 N.Y.S. 2d 231). Where such evidence is not available, courts have held that a property can be appropriately valued by using the comparable sales method, capitalization of income method or the reproduction costs less depreciation method. Matter of EMC Corporation v Unmack, as Assessor of Town of Tonawanda, et al, 92 N.Y. 2d 179 189 (N.Y. 1998), (citing Matter of Allied Corp. v Town of Camillus, 80 N.Y. 2d 351, 356). In valuing the subject property, it must be looked at in its existing use. In the Matter of Estate of Sol Goldman v Commissioner of Finance, et al, 153 Misc. 2d 104, 106 (N.Y. Sup. Ct., 1992). Courts have stated that, "the owner is to be assessed on the basis of the building...as it existed on the taxable status date, and not on what he could have erected". Id., (citing Matter of Pepsi Cola Co. v Tax Comm., 19 A.D. 2d 56, 58).

In the instant case, petitioner's appraiser uses the income capitalization method to determine the market value of the subject property. Petitioner began its valuation with an analysis of several retail buildings and automobile parking leases in Nassau County. Five out of the ten properties used as retail building comparisons are located on Northern Boulevard. Several adjustments had to be made in the comparisons. These adjustments include terms of the leases, size of the rental spaces, condition of the properties, location of the rentals, and the land to building ratios.

Respondent has exchanged an appraisal report of Sterling Appraisals, Inc. certified by Bob Sterling. The Sterling report utilizes a comparable sales approach utilizing whole to whole sales. It is important to note that not one of Sterling's comparable sales is an auto dealership (or rental business) which was sold for the continuation of this same business. It is clear to this court that Sterling's methodology values the subject property for its developmental potential ("highest and best use") and not for its value "in use" as an auto rental and sales business. This valuation for development is clearly in violation of statutory and case law. Sales of improved property for redevelopment do not reflect the value of the property in its existing use. (See New Country Club of Garden City, 1991 N.Y. Misc. Lexis 606, Supreme Ct., Nassau County, Judge Frank Rossetti, June 4, 1991, and Sol Goldman Estate, supra). It is not disputed that petitioner's property would be worth more if the building were demolished and rebuilt on. However, that is not relevant. For real estate tax purposes, the property is to be valued in its existing economic use even if the property is more valuable for redevelopment. (See New Country Club of Garden City, supra). In that action a golf course was valued as a golf course even though it may have had greater value for residential development. The County's appraisal is essentially a valuation of the land for its "highest and best" use in development. This is contrary to well established law.

Petitioner's method is appropriate and in accordance with existing case law (Sol Goldman Estate, supra). Respondent's methodology is in violation of existing case law because it does not value the existing use of the property but instead erroneously values the highest and best use of the land for redevelopment.

Accordingly, the Court has adopted the petitioners methodology.

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For trial purposes the parties stipulated as to the taxable status dates, stipulated ratios, assessments and equalized values. They are:

| <u>Year</u> | <u>Status Date</u> | <u>Assessment</u> | <u>Decision</u> | <u>Stipulated Ratio</u> | <u>Full Value</u> |
|-------------|--------------------|-------------------|-----------------|-------------------------|-------------------|
| 2002/03     | 1/02/02            | \$74,400          | 43,800          | 6.0%                    | \$1,240,000       |
| 2003/04     | 1/02/03            | \$12,062          | 8228            | .935%                   | \$1,290,053       |
| 2004/05     | 1/02/03            | \$12,062          | 8228            | .935%                   | \$1,290,053       |
| 2005/06     | 1/02/04            | \$12,623          | 7261            | .935%                   | \$1,350,053       |
| 2006/07     | 1/02/05            | \$15,604          | 8041            | .935%                   | \$1,668,877       |
| 2007/08     | 1/02/06            | \$18,512          | 8492            | .965%                   | \$1,918,342       |

At the outset of the trial of tax certiorari proceeding, the respondent's assessment is given the presumption of validity. The petitioner must show that the property has been overvalued to overcome the presumption. The petitioner needs merely to provide:

"...credible and competent evidence, usually in the form of a competent appraisal, that a valid dispute exists concerning the property's valuation. The ultimate strength, credibility or persuasiveness of petitioner's arguments are not germane during this threshold inquiry, nor is the weight to be given to either party's evidence relevant consideration at this juncture". EMC Corp. v Unmack, 92 NY2d 179, 180 (1998) aff'd on remand, 254 AD2d 683 (4<sup>th</sup> Dept. 1967),

The issue before the Court after petitioner presents its appraisal, accepts testimony - subject to cross-examination - is whether petitioner has offered sufficient evidence to rebut the presumption of validity of the assessment. The Court determines that the burden has been met. Here, petitioner has offered substantial evidence that the property is overvalued. (EMC Corp., at 187 *supra*). Substantial evidence is less than a preponderance of evidence "...and simply 'means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact'. (300 Gramatan Avenue Assocs. v State Division of Human Rights, 45 NY2d 176, 180". Carriage House Motor Inn, Inc. v City of Watertown, 136 AD2d 895, 897, 4<sup>th</sup> Dept., 1988).

Petitioner's report is based on sound appraisal technique and methods using the income approach to value. Comparable leases were selected among a range of leases available to the appraiser. Petitioner's appraiser selected leases most comparable to the subject. Each comparable was adjusted and the criteria used for adjustments was fully set forth in the report. All of the appraiser's facts, figures, and conclusions were set forth in the report pursuant to 22NYCRR202.59(g).

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Once petitioner has met its initial burden of proof, the presumption of validity of the assessment falls and the Court is required to weigh the entire record by a preponderance of the evidence. (FMC Corp. at 189, supra). The Court will consider all of the evidence offered by both sides and will ". . . weigh the relative merits of the underlying data and conclusions drawn. . ." (FMC Corp. at 190, supra).

The Court determines that the preponderance of evidence has shown that petitioner is entitled to the relief requested; namely, the petitioner has met its burden of proof to overcome the validity of the assessments. Further, the petitioner has submitted an appraisal that establishes the market value of the subject properties' existing use. .

Further, whereas the respondent's appraisal is defective as a matter of law, this Court is compelled to adopt the market values contained in the petitioner's submitted appraisal and as was testified to by the petitioner's Appraiser.

Submit judgment consistent with this decision.

Dated

8 March 10  
J.S.C.