



Discovery, and Its Absence, in Tax Certiorari Proceedings

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New York State lags behind the rest of the nation when it comes to the administration and appeal of property tax assessments. It also levies more local taxes, from more taxing jurisdictions, than almost any other state. In most states property tax appeals are resolved relatively quickly through informal negotiations, often without the participation of legal counsel at any stage. New York is among the leading litigation states, in which it is rare to achieve a fair and equitable result for a commercially owned property without extended litigation.

New York lacks tax tribunals and similar court forums dedicated to this highly specialized area of law, resulting in a patchwork of haphazard decisions spanning a period of many years and varying significantly from one part of

the state to another. These decisions tend to emphasize arcane procedural technicalities and offer either little or confusing guidance on valuation methodology, which is the core of any tax certiorari proceeding. Particularly shocking to many encountering the New York system for the first time, commercial tax appeals in many parts of the state commonly take a decade or more to be resolved.

This article provides a brief overview of the principles and operation of discovery in proceedings filed under Article 7 of the Real Property Tax Law (RPTL), more commonly known as tax certiorari proceedings. Discovery is one of the most perennially troubling and misunderstood areas of New York property tax law – for taxpayers, municipalities, and the judiciary – and accounts for a great many unnecessary delays in the resolution of these cases.

It is often assumed that a tax appeal, once filed in court, is to be treated like any other civil action in which discovery is available as of right. Either because of a lack of experience with such matters or in the hope that the taxpayer’s counsel will not object, respondents frequently serve ordinary civil action disclosure devices pursuant to CPLR Article 31, as if they were entitled to such information as of right. Likewise, some trial-level judges, accustomed to overseeing as of right discovery in most other matters coming before them, will condone such efforts or even promote them by requiring counsel for the parties to complete form discovery schedules that were not designed for the administration of Article 7 proceedings.

A tax certiorari proceeding is essentially a battle over the value of real property as well as equity in assessment as compared with other taxpayers. Disputes may focus on any number of factors, such as rents, expenses, occupancy, capitalization of net income, and the ratio at which property is assessed, but in New York State the evidence to be presented at trial is generally an expert witness’s opinion of value, which is provided in the form of a written report accompanied by oral testimony. Certiorari proceedings have little to do with disputed questions of what might have occurred in a particular fact pattern, in contrast to most other civil litigation. It is relatively rare for witnesses other than experts on value to play a role or for issues outside the normal scope of an appraisal to be considered by the court.

The most distinguishing – but frequently overlooked – feature of a tax certiorari matter is that it is a summary proceeding that falls under Article 4 of the CPLR and does not allow for discovery as of right, except that which is specifically offered under the Court Rules,¹ as will be detailed below. Notwithstanding the reality that these proceedings encounter extensive delays in many courts, municipal revenues and taxpayer monies were a paramount concern when the Legislature created the property tax law. The designation of these proceedings

as summary proceedings was intended, in part, to focus on the battle over the ultimate value of the subject and to minimize the costs and delays that necessarily flow from as of right discovery under CPLR Article 31. Because the ultimate issue in a certiorari proceeding is the reliability of an expert witness’s opinion of value, motions made pursuant to CPLR 408 should be scrutinized for true need; courts considering such motions must understand that in a broad sense all certiorari proceedings are quite similar in nature and the granting of special discovery in one proceeding will set a dangerous precedent for such discovery in thousands more.

A greater adherence to the clear design of the procedures for the exchange of information under New York law will result in the speedier administration of these matters and a reduction in legal costs incurred by municipalities – as well as easing clogged court calendars.

Discovery in Summary Proceedings

Tax certiorari proceedings are summary proceedings that allow for the common forms of discovery only upon leave of the court on motion. The primary purpose of a summary proceeding is the simple, speedy and inexpensive determination of a given case.² Article 7 proceedings restrict discovery because the goal of a summary proceeding is to not “inordinately delay” the claim.³ Ironically, tax certiorari proceedings are often the longest-running court matters of all, so curbing discovery consistent with the CPLR’s design is well advised.

Civil practice rules typically provide for full disclosure of all matter that is material and necessary in the prosecution or defense of an action. However, tax assessment proceedings commenced pursuant to RPTL Article 7 are within Article 4 of the CPLR, and thus are generally governed by the discovery rules set forth in CPLR 408,⁴ along with a few specific options provided under the RPTL and Court Rules. Accordingly, in a tax certiorari proceeding, any analogy to negligence actions, contract claims, and any other law pertaining to ordinary civil actions is improper.⁵

The strict rules of evidence applicable to trials do not rigidly apply in proceedings to review tax assessments.⁶ Instead, the parties are to be confronted with competent and material testimony in the form of expert witnesses and their appraisals.⁷ As a result, evidentiary material in certiorari proceedings is regularly reduced to a battle of expert opinions. Discovery does not play the same role in Article 7 proceedings as it does in typical CPLR matters.

As previously mentioned, in an Article 7 proceeding, as in all summary proceedings, disclosure is generally allowed only by leave of court.⁸ Requiring such leave of court to obtain disclosure is consistent with the “summary” nature of the proceeding due to the inherent delays involved in the discovery process.⁹

Two related disclosure devices are expressly permitted in a special proceeding without a prior court order under CPLR 408. These are the notice to admit facts under CPLR 3123 (specifically referenced in CPLR 408) and the admission of ratio under RPTL § 716.

The CPLR notice to admit allows for the parties to further narrow the issues requiring trial and may serve as a kind of stipulation among the parties on matters such as the parcel identification, size of the property, that the assessment was properly challenged, and so on. Its purpose is to

[e]liminate from litigation factual matters which will not be in dispute at trial . . . and . . . it may not be used to request admission of material issues, or ultimate or conclusory facts.¹⁰

Absent a timely denial of the matters included in a notice to admit, they are generally deemed admitted for the purposes of trial. The notice to admit may not be used as a substitute for other disclosure devices.¹¹

Valuation of property is determined by its condition as of a valuation and status date pursuant to local and state law — not on the basis of some future contemplated use.

The notice to admit ratio is a similar device. Specifically provided for within the Real Property Tax Law, it allows the petitioner to serve upon the respondent a demand to admit the ratio at which other real property in the assessing unit is assessed (sometimes referred to as the “equalization rate” or “level of assessment”).¹² The notice may specify a ratio as long as it is not in excess of 95%. If the respondent does not deny that such ratio is correct within 15 days or such further time as the court may allow, the percentage is deemed admitted for trial. While it may seem simple enough for the respondent to serve a denial and preserve the issue of ratio for trial, counsel must consider the consequences: if the petitioner later proves its stated ratio to be correct or lower and the respondent lacked a sufficient basis for the denial, the respondent is responsible for the reasonable costs of the experts and attorneys required to present such proof.¹³ It has been further held that the basis for a denial of ratio must be bona fide, and even a study to this effect may not be sufficient if only cursory.¹⁴ The cost so incurred by the municipality may be significant. One of the most expensive expert witness assignments in a tax certiorari trial is the commissioning of a ratio study, and the respondent’s counsel is well advised to consider the potential cost related to a denial of this notice.

Limitations on Discovery Pursuant to CPLR 408

The standard to be applied by the court for summary proceedings under CPLR 408 is that disclosure should be

granted only when “ample need” is shown.¹⁵ Information sought to be disclosed must be considered “material and necessary.”¹⁶ The test is one of usefulness and reason, and must be construed to reduce delay.¹⁷ Where the contested issue is relatively simple or ancillary to the main dispute and the cost of conducting disclosure is not justified, no “ample need” for disclosure is demonstrated.¹⁸ In deciding such motions, courts are to remain mindful that the ultimate goal of the petitioner and the respondent is to introduce a credible overall value conclusion by their respective experts and not to prove every underlying fact that might have led to such conclusion. Outside of tax certiorari proceedings, professional appraisers must render such value conclusions every day, usually without the benefit of every item of data they might wish to examine.

Courts frequently deny discovery requests made pursuant to CPLR 408, which stands in contrast to the liberal approach taken toward most civil discovery requests. This occurs particularly when municipalities

attempt to discover business information from petitioners. Information frequently sought by municipalities includes the taxpayer’s business plans and production figures. Traditionally, courts have been very reluctant to grant such discovery requests.

Business information and related financial information is generally not directly related to the value of the realty and is quite different from rental revenue. Information relating to a taxpayer’s business plans as well as production figures for factories located on the property has not been discoverable.¹⁹ This denial of access has extended to studies prepared by petitioners in connection with past, current or future development, alteration and demolition of their realty and improvements, and new construction. Requests for quantities and costs of production for products produced at the taxpayer’s plant have also been denied by courts.

Such documentary material has been denied because it was immaterial and not relevant to the valuation proceeding at hand.²⁰ Instead, courts have held that such information seems more relevant to the question of a petitioner’s business plans than the value of real estate. Valuation of property is determined by its condition as of a valuation and status date pursuant to local and state law – not on the basis of some future contemplated use.²¹ However, not all requests for documentation are denied by courts. Documents regarding costs of constructing a petitioner’s single-family residence were deemed to be material and necessary, for example.²²

Depositions are treated no differently than any other discovery device in an Article 7 proceeding; thus, a municipality is not entitled to take testimony by deposition without a court order.²³ Depositions tend by their nature to introduce unwarranted delay in the Article 7 proceedings, which are intended to be summary;²⁴ and only in rare circumstances will a deposition be needed to establish evidence necessary to arrive at a competent valuation. As noted earlier, professional appraisers render valuations in their daily practice without the use of depositions or similar devices. Courts will generally seek to determine if a deposition is necessary to a party's case before granting such a request.²⁵

Review of discovery requests made by the petitioner is equally stringent. Disclosure is limited to a determination of the correctness of the assessment and not to a review of what the assessor did or how the assessor arrived at a particular conclusion. Thus, the formulas or policies or mental processes used by assessors are not relevant to the issues raised and may not be discovered.²⁶ Accordingly, access to notations by the municipalities' assessment staff as to the significance or insignificance of reported transfers has not been granted.²⁷

Requests for discovery of computation sheets and guidelines or reports showing fractional assessment rates used by assessors have also been denied. Courts have reasoned that such assessment ratio guidelines are not material and necessary as the formulas or policies used by assessors are irrelevant to the issues raised in the judicial proceeding authorized by RPTL Article 7. Thus, the disclosure of certain material such as assessment field books, notes, and calculations has been denied as unnecessary to a resolution of the fairness of the final assessment and because such disclosure would constitute an impermissible inquiry into the processes that were used by the assessors in arriving at their determinations.²⁸ Because the methods used in making a specific assessment are irrelevant in New York State, disclosure of these methods cannot be said to relate to the *product* of the assessor, which is the only issue in an Article 7 proceeding. Courts have further reasoned that disclosure of such documents would likely result in requests to have the assessors explain their notations and calculations, thereby severely impeding them in the performance of their statutory duties.²⁹

Furthermore, in a case in which an interrogatory was granted to the petitioners, disclosure was allowed only for a specific question concerning the fixed equalization rate of the town; thus, the interrogatory was very limited.³⁰ This court reasoned that the limitation was necessary to safeguard against the possibility of any unauthorized probing activities on behalf of the petitioners but wanted to afford them the opportunity to seek the answers to specific questions.³¹ Numerous proceedings are brought every year to review municipal tax assess-

ments. To subject the assessors to examinations before trial would severely impede the proper performance of their statutory duties.

Petitioners have also been granted leave to take depositions of the State Board of Equalization and Assessment (SBEA) in Article 7 proceedings. However, such petitioners were only allowed to question the SBEA concerning the allegedly voluminous and complex facts forming the basis of the agency's assessments so as to simplify the issues for trial in the interests of judicial economy. Petitioners were not entitled to examine the SBEA's assessors as to the mental processes and formulas they used in arriving at their determinations.³²

Court Rule § 202.59

Income and Expense Provisions

One very limited opportunity for as of right discovery in Article 7 proceedings is found within Court Rule § 202.59. Compliance by petitioners with § 202.59 is the primary means by which respondents may gather useful information in tax certiorari proceedings involving income-producing properties. This section applies to every Article 7 proceeding in the state, except for those in New York City, where Court Rule § 202.60 is applied instead.³³

This rule provides that, before the note of issue and certificate of readiness are filed, the petitioner must have

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served, in triplicate, a verified or certified statement of the income and expenses of the property for each tax year under review or submit a statement that the property is not income producing. The failure to have served and to file the income and expense statement as required for income-producing properties pursuant to Court Rule § 202.59(b) requires striking the note of issue. In cases where more than four years have elapsed since the inception of the case, the matter must be dismissed because the defective note of issue cannot be fixed, except where good cause is shown within such four-year period.³⁴

Income and expense statements need not be filed and served prior to filing a note of issue where a property is not “income-producing,”³⁵ however. Such property is a “property owned for the purpose of securing an income from the property itself”;³⁶ a cooperative or condominium apartment building is considered income-producing property.³⁷

Issues have arisen under the circumstance where the business property is “owner occupied,” meaning that the petitioner itself is present on the premises and personally operates the business resident thereon. An owner-occupied business property shall be considered income producing as determined by the amount reasonably allocable for rent, but the petitioner is not required to make an estimate of rental income.³⁸ In other words, “income” refers to arm’s-length, bona fide, rental income and therefore implies a lease of some or all of the premises; it does not refer to business income from an enterprise that takes place on the premises. (Properties that would generally *not* be considered income producing, such that they would not require production of a statement, are typically owner-occupied facilities and vacant land.) Accordingly, courts have repeatedly denied motions by respondents seeking income and expense statements where the property is owner-occupied.³⁹

For example, a motion to compel a petitioner to supply a certified statement of income and expenses has been denied because the petitioner was the owner/occupier of several airport rental car concession facilities.⁴⁰ The court noted that the petitioner’s business income and expenses were “irrelevant to the valuation” of the rental facilities.

Another example was an owner-occupied golf course; it was not an income-producing property and, thus, its owner was not required to verify its business income and expenses prior to the filing and service of a note of issue, because the owner’s income was produced by commercial business conducted on the property and not directly by the real estate.⁴¹ However, while the golf course owner was not required to verify its business income and expenses *prior* to the filing and service of a note of issue, the trial court deemed an income and expense statement relevant and material to the appraisal of the golf course, and therefore discoverable.⁴²

Audit Provisions

In addition to the income and expense statement, respondents are entitled to an audit of a petitioner’s financials if timely and properly requested. In practice, audits are quite rare and are generally sought only where the income and expense statement strongly suggests a specific issue that requires further probing. The service of the income and expense statement gives respondents 60 days to request, and 120 days to complete, “for the purpose of substantiating petitioner’s statement of income and expenses,” an audit “of the petitioner’s books and records for the tax years under review.”⁴³ Failure of the respondent to request or complete the audit within the time limits is deemed a waiver of the right to audit.

If respondents fail to request an audit of a petitioner’s books and records within 60 days after service of the statement of income and expenses, they have waived that privilege and are thereafter estopped from challenging the accuracy of the information supplied by the petitioner.⁴⁴ However, if the petitioner fails to respond to an audit request and does not furnish its books and records within a reasonable time after receipt of the request, or otherwise unreasonably impedes or delays the audit, the case may be dismissed.⁴⁵

The scope of the audit is often quite broad. The petitioner’s books and records, general ledgers, balance sheet accounts and all other financial documents “for all years in question” shall be made available as needed by the auditors, subject to any confidentiality agreement proposed.⁴⁶ This approach has been supported by ample authority, including the policy underlying the enactment of CPLR 3140 and Court Rule § 202.59, as well as Generally Accepted Auditing Standards, Generally Accepted Accounting Principles, and the American Institute of Certified Public Accountants Professional Standards (“AICPA Standards”).⁴⁷

The Exchange of Appraisals

Pursuant to Court Rule § 202.59(g), appraisals are required of both parties before trial.⁴⁸ The chief administrator of courts is required to adopt rules governing the exchange of these reports.⁴⁹ Appraisal-exchanging statutes were enacted to make appraisals in “proceedings for condemnation, appropriation or review of tax assessments” more readily available and to serve as an “aid in the expeditious disposition of such proceedings.”⁵⁰ Not only does this assist disclosure, it allows opposing counsel to adequately prepare for an effective cross-examination of a party’s expert witness, therefore abbreviating proceedings that may dig into complex property issues.⁵¹

The appraisal reports must contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving

comparable properties are relied on, then they must be set forth with sufficient particularity so as to permit the transaction to be readily identified. The report must contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal report should contain photographs of the properties under review and any comparable property that is relied on by the appraiser, unless

property owner must still file an exclusion form. If the property owner fails to take any action, there are three main penalties: a financial penalty not to exceed 3% of the assessed value of the income-producing property; dismissal of any complaints that may be pending with the Board of Assessment Review; and the City Assessor can subpoena the owner's books and records relevant to the income and expenses of the property and can request

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the court directs otherwise. The report should not leave items to be guessed at by the reader or filled in by the appraiser through testimony at trial.

The appraisal's importance cannot be overemphasized. The appraisal reports set the parameters for expert testimony at trial. An inadequate appraisal report may be excluded and, along with it, any trial testimony by the expert who prepared it. Upon the trial, expert witnesses are limited in their proof of appraised value to details set forth in their respective appraisal reports. Any party who fails to serve an appraisal report as required is precluded from offering any expert testimony on value.⁵²

However, upon the application of any party on such notice as the court shall direct, the court may, upon good cause shown, relieve a party of a default in the service of a report, extend the time for exchanging reports, or allow an amended or supplemental report to be served upon such conditions as the court may direct. After the trial of the issues has begun, any such application must be made to the trial judge and shall be entertained only in unusual and extraordinary circumstances.

Locally Mandated Income and Expense Requirements

In addition to the income and expense requirements of Court Rule § 202.59, some municipalities require all property owners to file income and expense statements, regardless of whether they have filed a tax appeal. In New York City, the Department of Finance requires owners of income-producing property to electronically file an annual income and expense statement.⁵³ The Department of Finance is authorized to impose substantial monetary penalties for a failure to file. The failure to file a timely income and expense statement may also result in a denial by the Tax Commission to review a property's tax assessment.⁵⁴

In Yonkers, any person or entity owning or leasing income-producing property is required to file an annual income and expense statement.⁵⁵ Even if a specific property does not require a filing due to its circumstances, the

a court order forcing the owner to furnish the required income and expense statement together with the books and records regarding the property. The City Assessor's Office is also entitled to recover its costs and expenses, including attorney fees.

Additionally, the City of Mount Vernon enacted Local Law No. 4 in 1990, which requires owners of income-producing real property to file an annual income and expense statement with the Commissioner of Assessment by the first day of February every year.⁵⁶ If the statement is not timely filed, the Commissioner may compel production of relevant books and records by subpoena or apply for a court order requiring the owner to furnish the income and expense statement as well as related books and records.⁵⁷ Local Law No. 4 further specifies that, where a property owner fails to provide the requisite statement on time, "the Board of Assessment Review shall deny any complaint in relation to the assessment of such property by such owner."⁵⁸

The legality of such local requirements has come under fire and been held unconstitutional in certain respects. The Legislature has set forth procedures and requirements for administrative review of property assessments for judicial review in RPTL Article 7. Some of the penalties sought to be enforced by certain local municipalities have been deemed to unconstitutionally usurp this state legislative authority.

The Municipal Home Rule Law, authorized by the Legislature, specifies that local governments may not enact local laws "inconsistent with the provisions of the constitution or . . . any general law."⁵⁹ Additionally, Article IX of the New York State Constitution empowers local governments to adopt laws relating to "the levy, collection and administration of local taxes," so long as those enactments are "consistent with laws enacted by the legislature."⁶⁰ Based on this legislative authority, courts have decided that municipalities, in the absence of action by the Legislature, cannot enforce early disclosure requirements in a manner that restricts judicial review of property assessments.

Courts have specifically held early disclosure requirements to be unenforceable, allowing petitioners who have met the statutory requirements of the RPTL to obtain judicial review of their realty assessments notwithstanding their breach of local requirements.⁶¹ Mount Vernon Local Law No. 4, which penalizes noncompliance with its filing requirement by restricting the availability of administrative correction of tax assessments, has been deemed inconsistent with statutory authority and therefore unenforceable.⁶²

Additionally, the Legislature requires disclosure of an income and expense statement only upon request by the local board, which differs from Local Law No. 4 in various respects.⁶³ First, the Legislature does not deem a failure to forward financial information “to the assessor, prior to creation of the tentative assessment roll, a bar to obtaining a reduction.”⁶⁴ Instead, it merely requires disclosure to the board during administrative review. Consequently, mandating that petitioners also file a pre-assessment income and expense statement pursuant to Local Law No. 4 in order to obtain judicial correction of their final assessments effectively adds a condition to judicial review not contained in RPTL Article 5 or 7.⁶⁵

Discovery in Article 7 Proceedings Must Remain Limited

Article 4 Proceedings Are Not Intended for Extensive Discovery Practice

The nature and purpose of summary proceedings are such that disclosure will rarely be granted.⁶⁶ Introducing extensive discovery practice to an Article 7 summary proceeding would disrupt the entire time frame set up by the drafters of Article 7. While it may well be that certiorari proceedings already tend to be extraordinarily lengthy, and have long since departed from the notion of “summary” proceedings, they represent a huge percentage of the proceedings within the court system and upon municipal attorneys’ desks. With taxpayers routinely appealing the assessment of many thousands of parcels each year, there simply are not sufficient resources to allow the scope of discovery permitted in ordinary civil actions. The plethora of discovery motions standard in New York civil practice are unknown to Article 4, which “does not envision any interlocutory motion practice during a special proceeding except for motions to dismiss on points of law.”⁶⁷

The usual motions allowed under the CPLR do not apply to summary proceedings due to the intended accelerated pace of such proceedings.⁶⁸ This is a logical extension “of the legislative concept that special proceedings can be determined as though they were themselves motions rather than as plenary actions.”⁶⁹ Ordinary discovery practice would run contrary to the concept of summary proceedings, which were established to create

a speedy and equitable procedure for both the taxpayer and municipality. The exchange of information in Article 7 proceedings must be accomplished as efficiently and sensibly as the law allows, always remaining focused on the ultimate objective: arriving at an estimate of market value and the resulting assessment. Courts should bear these principles in mind whenever faced with discovery requests in Article 7 proceedings.

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1. 22 N.Y.C.R.R. pt. 202.
2. See *Haskell v. Surita*, 109 Misc. 2d 409, 439 N.Y.S.2d 990 (N.Y. Civ. Ct. 1981).
3. See *Tankoos-Yarmon Hotels, Inc. v. Smith*, 58 Misc. 2d 1072, 299 N.Y.S.2d 937 (App. Term, 1st Dep’t 1961).
4. *Xerox Corp. v. Duminuco*, 216 A.D.2d 950, 629 N.Y.S.2d 568 (4th Dep’t 1995).
5. *Singer Co. v. Tax Assessor of Vill. of Pleasantville*, 86 Misc. 2d 631, 633–34, 382 N.Y.S.2d 628 (Sup. Ct., Westchester Co. 1976) (this Westchester County court specifically held that an analogy to negligence actions would not be proper in a tax certiorari proceeding).
6. *People ex rel. Congress Hall v. Ouderkirk*, 120 A.D. 650, 105 N.Y.S.134 (3d Dep’t 1907).
7. See *People ex rel. Batt v. Rushford*, 81 A.D. 298, 80 N.Y.S. 891 (3d Dep’t 1903).
8. CPLR 408.
9. *Plaza Operating Partners Ltd. v. IRM (U.S.A.) Inc.*, 143 Misc. 2d 22, 23, 539 N.Y.S.2d 671 (N.Y. Civ. Ct. 1989) (the court held “discovery tends to prolong an action and is therefore inconsistent with the expeditious nature of a special proceeding”).
10. *Lewis v. Hertz Corp.*, 193 A.D.2d 470, 597 N.Y.S.2d 368 (1st Dep’t 1993).
11. *Jonas v. Liberty Lines Transit, Inc.*, 142 A.D.2d 554, 530 N.Y.S.2d 36 (2d Dep’t 1988).
12. RPTL § 716(1).
13. RPTL § 716(2).
14. *Conifer Baldwinville Assocs. v. Town of Van Buren*, 68 N.Y.2d 783, 506 N.Y.S.2d 853 (1986).
15. *Antillean Holding Co. v. Lindley*, 76 Misc. 2d 1044, 352 N.Y.S.2d 557 (N.Y. Civ. Ct. 1973).
16. *Saratoga Prop. Dev. v. Assessor of City of Saratoga Springs*, 62 A.D.3d 1107, 1108, 879 N.Y.S.2d 234 (3d Dep’t 2009) (citing *Food Fair v. Bd. of Assessment Review of Town of Niskayuna*, 78 A.D.2d 335, 337, 435 N.Y.S.2d 378 (3d Dep’t 1981)).
17. *Id.*
18. See *In re Shore*, 109 A.D.2d 842, 486 N.Y.S.2d 368 (2d Dep’t 1985).
19. *Gen. Elec. Co. v. Macejka*, 117 A.D.2d 896, 498 N.Y.S.2d 905 (3d Dep’t 1986).
20. *Id.* at 897.
21. *Adirondack Mountain Reserve v. Bd. of Assessors*, 99 A.D.2d 600, 471 N.Y.S.2d 703 (3d Dep’t), *aff’d*, 64 N.Y.2d 727, 455 N.Y.S.2d 744 (1984).
22. *Saratoga Prop. Dev.*, 62 A.D.3d at 1107.
23. *Atkinson v. Trehan*, 70 Misc. 2d 612, 613, 334 N.Y.S.2d 291 (N.Y. Civ. Ct. 1972).
24. CPLR 403(b) (“the primary function of a special proceeding is summary disposition”).
25. See *Katz Buffalo Realty, Inc. v. Anderson*, 25 A.D.2d 809, 270 N.Y.S.2d 12 (4th Dep’t 1966) (court stated that an examination of the Village Assessor should only be allowed if it is “material and necessary”).

26. *425 Park Ave. Co. v. Fin. Adm'r of the City of N.Y.*, 69 N.Y.2d 645, 511 N.Y.S.2d 589 (1986); *City of Amsterdam v. Bd. of Assessors*, 91 A.D.2d 809, 809, 458 N.Y.S.2d 44 (3d Dep't 1982).
27. *City of Amsterdam*, 91 A.D.2d at 809.
28. *Id.*
29. *Id.* at 810.
30. *Blooming Grove Props., Inc. v. Bd. of Assessors*, 34 A.D.2d 953, 954, 312 N.Y.S.2d 85 (2d Dep't 1970).
31. *Id.*
32. *Nat'l Fuel Gas Distrib. Corp. v. State Bd. of Equalization & Assessment*, 86 A.D.2d 707, 707, 446 N.Y.S.2d 544 (3d Dep't 1982).
33. N.Y. Court Rule § 202.60 is practically identical to N.Y. Court Rule § 202.59 in terms of income and expense reports, the filing of the note of issue, audits, the exchange of appraisals, and the use of appraisal reports at trial. The only difference between the two rules is that § 202.59 holds that a party may only demand a pretrial conference after having filed the note issue, whereas § 202.60 holds that no note of issue may be filed until the preliminary conference has been held.
34. RPTL § 718(2)(d); see *Eastgate Corp. Park, LLC v. Bd. of Assessment Review*, 54 A.D.3d 1036, 1036, 865 N.Y.S.2d 249 (2d Dep't 2008) (affirming the dismissal of the petition because "the petitioner made no showing of good cause to excuse the errors . . . and did not make any attempt to correct the defects within the strictly-enforced four-year period set forth in RPTL 718(2)(d)").
35. N.Y. Court Rule § 202.59(b) (Tax Assessment Review Proceedings in Counties Outside the City of New York: Statement of Income and Expenses).
36. N.Y. City Admin. Code § 11-208.1(e).
37. N.Y. Court Rule § 202.59(b) (Tax Assessment Review Proceedings in Counties Outside the City of New York: Statement of Income and Expenses).
38. *Id.*
39. *Ardley Country Club v. Assessor of Town of Greenburgh*, 24 Misc. 3d 1118, 879 N.Y.S.2d 319 (Sup. Ct., Westchester Co. 2009); see also *White Plains Props. Corp. v. Tax Assessor of City of White Plains*, 58 A.D.2d 653, 396 N.Y.S.2d 68 (2d Dep't 1977).
40. *Avis Rent A Car Sys., Inc. v. Town of Rye*, 131 A.D.2d 568, 568, 516 N.Y.S.2d 286 (2d Dep't 1987).
41. See *Ardley Country Club*, 24 Misc. 3d at 1118; see also N.Y. Court Rule § 202.59.
42. See *Ardley Country Club*, 24 Misc. 3d at 1125; see also N.Y. Court Rule § 202.59.
43. N.Y. Court Rule § 202.59(c); see *Ames Dep't Stores, Inc. v. Assessor of the Town of Greenport*, 276 A.D.2d 890, 891, 714 N.Y.S.2d 362 (3d Dep't 2000) (this rule is "designed to afford the other party or parties adequate time to examine and test the accuracy of the facts contained in the statement, and ultimately utilized in the appraisal." In this case, "having failed to request an audit pursuant to this regulation, respondents waived that privilege").
44. *Georgian Court Apt. Masis Parseghian v. Assessor of the Town of Orangetown*, 182 A.D.2d 978, 980, 582 N.Y.S.2d 533 (3d Dep't 1992); see also N.Y. Court Rule § 202.59(c).
45. N.Y. Court Rule § 202.59(c).
46. *Miriam Osborn Memorial Home Ass'n v. Assessor of City of Rye*, No. 17175/97, 791 N.Y.S.2d 871, 2004 WL 1656500 (Sup. Ct., Jul. 22, 2004).
47. *Id.*
48. N.Y. Court Rule § 202.59(g). The Uniform Trial Court Rules provide for the exchange and filing of such appraisal reports upon filing a note of issue and certificate of readiness. As mentioned above, § 202.59 applies to the exchange and filing of appraisal reports in tax assessment review proceedings in counties outside the City of New York, § 202.60(g) applies to the exchange and filing of appraisal reports in tax assessment review proceedings in counties within the City of New York, and § 202.61 applies to the exchange of appraisal reports in eminent-domain proceedings.
49. CPLR 3140 (Disclosure of appraisals in proceedings for condemnation, appropriation or review of tax assessments).
50. *White Plains Props. Corp. v. Assessor of the City of White Plains*, 58 A.D.2d 871, 871-74, 396 N.Y.S.2d 875 (2d Dep't 1977), *aff'd*, 44 N.Y.2d 971, 408 N.Y.S.2d 500 (1978).
51. *Id.* at 871-72.
52. N.Y. Court Rule § 202.59(h) (Use of appraisal reports at trial). (However, upon good cause shown, the court may "relieve a party of a default in the service of a

report, extend the time for exchanging reports, or allow an amended or supplemental report to be served upon such conditions as the court may direct").

53. City of New York, Real Property Income and Expense Statements (2010), http://www.nyc.gov/html/dof/html/property/property_info_rpie.shtml ("Owners of income-producing properties that have an actual assessed value of more than \$40,000 are required to file annual Real Property Income and Expense (RPIE) statements with Finance, unless the properties are specifically excluded from the filing requirements by law.")

54. NYC Finance, Real Property Income and Expense, available at <http://www.nyc.gov/html/dof/html/pdf/rpie/rpiefaqv2.pdf> ("The law provides that the New York City Tax Commission will deny a hearing on an Application for Correction of the Tentative Assessed Valuation for the upcoming tax year, for any property for which an income and expense schedule was required, but not filed by the deadline.")

55. City of Yonkers, Local Law No. 9 of 1993.

56. *Fifth Ave. Office Ctr. Co. v. City of Mount Vernon*, 89 N.Y.2d 735, 738, 658 N.Y.S.2d 217 (1997) (discussing Mount Vernon City Charter § 226-a).

57. *Id.*

58. *Id.*

59. *Id.* at 740 (citing N.Y. Municipal Home Rule Law § 10(1)(ii)).

60. *Id.* (citing to N.Y. State Const., Art. IX, § 2(c)(ii)(8), which states "every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to . . . [t]he levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements, consistent with laws enacted by the legislature").

61. *Id.*

62. *Id.* at 743 (petitioners "who have met the statutory requirements of RPTL articles 5 and 7 can obtain judicial review of their realty assessments notwithstanding their breach of Local Law No. 4. To hold otherwise would impose preconditions to review that are inconsistent with the RPTL and, thus, violate the Municipal Home Rule Law and article IX of the State Constitution").

63. *Id.* at 741 (RPTL § 525(2) (Hearing and determination of complaints and ratification of assessment stipulations)).

64. *Id.*

65. *Id.*

66. *Plaza Operating Partners Ltd. v. IRM (U.S.A.) Inc.*, 143 Misc. 2d 22, 23, 539 N.Y.S.2d 671 (N.Y. Civ. Ct. 1989).

67. *Goldman v. McCord*, 120 Misc. 2d 754, 754, 466 N.Y.S.2d 584 (N.Y. Civ. Ct. 1983); see also CPLR 404 (Objections in point of law); CPLR 7804(f) (Procedure: Objections in point of law).

68. See *Goldman*, 20 Misc. 2d 754.

69. *Id.* at 754.



"Hey, I'm all about being reasonable."