

SUMMARY OF NEW YORK STATE TAX CERTIORARI & CONDEMNATION LAW CASES IN 2006

By Thomas A. Dickerson¹

Recently, the Court of Appeals ruled on the assessment classification of electricity generating power plants in a deregulated environment and the propriety of Nassau County's assessment practices. In Astoria Gas Turbine Power LLC v. Tax Commission of the City of New York¹, the Court of Appeals, noting that the purpose of deregulation was " to lower consumer costs, encourage economic development and continue safe and reliable service ", changed the classification of power plant equipment located in a " special assessing unit " from class three [" utility real property "] to class four [" general commercial real property "]. The Court's reasoning was based upon " lightened governmental regulation...Unlike a utility, AGTP is not assured a reasonable rate of return, but is at the mercy of volatile competitive market forces based on supply and demand...AGTP is a competitive entity...whose real property is

¹Thomas A. Dickerson is an Associate Justice of the Appellate Division, Second Department of the New York State Supreme Court formerly presiding over the Tax Certiorari & Condemnation Law Part of the 9th Judicial District.

properly placed in class four ". And in O'Shea v. Board of Assessors of Nassau², the Court of Appeals, noting that " As a result of a (mandated) countywide revaluation...the appraised or full market value (of some residential property) soared, often at least doubling ", affirmed the dismissal of challenges to Nassau County's assessment practices as violating RPTL § 1805(1) " which limits increases on assessments on residential property in Nassau County to not more than six percent per year and 20% over any five-year period ". Notwithstanding a vigorous dissent the majority chose not to " rewrite (RPTL § 1805(1) so as to preclude the County from doing what it did here: bring assessed values in line with market values over three years in order to reduce accumulated and significant tax disparities between poorer and more affluent residential areas, without changing the tax burden of the residential class as a whole ".

In addition the appellate divisions and numerous trial courts ruled on a variety of tax certiorari and condemnation issues in 2006 including valuation, tax exemptions, selective reassessment³, equalization rates⁴, RPTL § 727 Moratorium⁵, 22 NYCRR § 202.59⁶, proper service⁷, standing⁸, interest on refunds⁹, interior inspections¹⁰, discovery¹¹, payments-in-lieu-of-taxes [PILOTS]¹² and evidentiary issues¹³.

Valuation

In 2006 the Courts considered valuation issues involving electricity generating stations and transmission facilities¹⁴, a shopping center¹⁵, farm land¹⁶, vacant land¹⁷, a garden apartment complex¹⁸, a cooperative apartment complex¹⁹, several parcels of land, some vacant and some with improvements [community center, swimming pool, tennis courts], representing common areas within a planned living community²⁰, a commercial building²¹ and single family homes²² with market values in the \$2,000,000 range.

Of Ceilings & Floors

A proper valuation analysis of real property in tax certiorari, condemnation and even tax exemption²³ proceedings must take into account ceilings and floors. First, the parties are bound by their admissions of reconciled values in their respective appraisals for each year under review [Orange & Rockland Utilities, Inc. v. Town of Havertsraw Assessor²⁴]. Second, petitioners are bound by the full value figures in their Petitions but only to the extent that they are greater than the admissions of value which appear in their appraisals²⁵ and may " not seek a reduction in the aggregate assessments... below the amounts...requested in (their) complaints before (the) Board

of Assessment Review " [Radisson Community Association, Inc. v. Long²⁶]. Third, the respondents may not rely upon an appraised value which exceeds the equalized full market value which they established for the property [VGR Associates LLC v. Assessor of the Town of New Windsor²⁷]; Fourth, the total assessment must be the subject of the appraisal [Johnson v. Kelly²⁸]. Fifth, in condemnation proceedings the assessed value may be considered as a valuation floor or, at least, as some evidence of value [Village of Irvington v. Sokolik²⁹].

Methodologies

The four basic methods for valuing real property in tax certiorari [value as of taxable status date] and condemnation proceedings [highest and best use] are the (1) income approach³⁰ including the discounted cash flow methodology (DCF³¹), (2) sales comparison approach³², (3) reproduction cost new less depreciation [RCNLD³³] approach and (4) recent sales price generated in an arm's length transaction.

Income Approach

In Orange & Rockland Utilities, Inc. v. Town of Havertstown Assessor³⁴ and Mirant New York, Inc. v. Town of Stony Point

Assessor³⁵, the Court, in valuing two electricity generating plants noted that post de-regulation " An electricity generating facility is...an income stream " but rejected the " income [DCF]...methodologies and accept(ed) the Petitioners' cost [RCNLD] methodology...as the only reasonable method of establishing true value...given the inconsistency and anecdotal nature of market data (pre-deregulation) and the unreliability and volatility of market data (post-deregulation), all of which developed during a tumultuous and disheartening period of deregulation " .

In VGR Associates LLC v. Assessor of the Town of New Windsor³⁶, a tax certiorari proceeding involving the value of an anchor store in a shopping center, the Court accepted the income approach, rejected the respondents' " half-box theory " and the petitioner's " fictionalizing " of taxes, examined factors such as the selection of economic rents³⁷, stepped-up rentals, tenant improvements, vacancy and collection losses and double counting management fees and chose a non-institutional capitalization rate.

In Earla Associates v. Board of Assessors of the City of Middletown³⁸, a tax certiorari proceeding involving the value of a 276 unit garden apartment complex, the Court accepted the income approach, rejected the respondent's sales comparison approach [" [W]ithout a detailed understanding of the income and

expenses of the proposed comparable sales, there is no factual basis for concluding that the sales are in fact comparable to the subject property "]³⁹, noted the similarity of the parties' net operating income and selected a non-institutional capitalization rate after considering the " brochure quality with street appeal " of the subject property and the petitioner's alternative " fiscalization " methodology.

And in Prospect Owners Corp. v. Tax Commission of the City of New York⁴⁰, a tax certiorari proceeding involving the value of 403 residential unit cooperative apartment complex, the Court accepted the income approach [" Although the sales comparison approach was also used by respondents ' as a check or test of reasonableness to confirm the income approach ' "] noting that a cooperative building's " market value should be calculated as no more than if it were a rental building as required by law "⁴¹, rejected petitioner's view that " the assessed values should have been reduced by the estimated cost of replacing windows...and pipes " finding " that any future expenditure for windows and water pipes would be offset by future MCI rent increases...and could be removed...from the full market value calculations " and that petitioner failed to demonstrate that " respondents' assessment of the subject property was overvalued " .

Sales Comparison Approach

In Village of Irvington v. Sokolik⁴², an eminent domain proceeding, the Court established the highest and best use of 8,513 square feet or .195 acres of vacant land with a Hudson River view which had been taken for the purpose of constructing a " a sand and salt supplies storage facility ". The Court considered a variety of adjustments to the comparable sales presented by the parties in their appraisals to include sloping terrain, frontage on a public or private street, access " over (a MTA right of way) and through (a MTA Parking Lot)", the need to and probability of obtaining variances, the absence of some utilities such as a sanitary sewer connection, Hudson River view⁴³, remoteness in time and location and similarity in size and zoning and concluded a highest and best use value of \$123,564.67.

RCNLD Method

In three cases involving the valuation of power plants the Courts used the reproduction cost new less depreciation [RCNLD] approach. In Consolidated Edison Company v. City of New York⁴⁴, a tax certiorari case involving the valuation " of three power generation units and transmission facilities located on Staten

Island " the majority held that " Depreciation for functional obsolescence due to excess construction costs is, where indicated by the facts, a necessary measure of ' disutility diminishing in some way the value of the property ' "45.

In Orange & Rockland Utilities, Inc. v. Town of Havertsraw Assessor⁴⁶ and Mirant New York, Inc. v. Town of Stony Point Assessor⁴⁷, a tax certiorari case involving the valuation of two power plants [Bowline and Lovett] in Rockland County, the Court rejected the income [DCF] and sale comparison approaches relying exclusively upon the RCNLD method which has been accepted by New York Courts, particularly, in valuing power plants⁴⁸. The Court considered a variety of factors such as the sticks & bricks method, generic steam turbines, functional obsolescence for excess construction costs, state of the art CCGT as replacement technology, the need to expand summer capacity by adding chillers and coolers, physical and functional depreciation, average service lives, inutility analysis and functional obsolescence for excess operating costs concluding full market values for Bowline [1997-2003] in the range of \$279,599,400 to \$481,338,028 and for Lovett [2000-2003] in the range of \$213,580,000 to \$227,667,990. Tax refunds of some \$275,000,000 were anticipated by the taxing authorities involved⁴⁹

Recent Arms Length Sale As Best Evidence

In Park Place Realty LLC v. Assessor of The Village of Bronxville⁵⁰, a tax certiorari proceeding, the Court valued, within the context of a motion seeking summary judgment motion, a " One-story commercial building containing 6,823 square feet " occupying " a midblock site on Park Place...in the Village of Bronxville ". The Court relied upon a recent sale price of \$1,325,000 as the best evidence of value [" Amongst the recognized valuation methods " the best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy "] finding the sale to be an arm's length transaction⁵¹ and concluding " an indicated assessed value of \$45,448 for 2006 ".

Tax Exemptions

In Miriam Osborn Memorial Home Association v. Assessor of the City of Rye⁵², a modern Continuing Care Retirement Community (CCRC)sought restoration of a 100% tax exemption pursuant to RPTL § 420-a(1)(a) " which it enjoyed from 1908 to 1996 when it was revoked by the Assessor and partially restored [20.8% to 18.04%] by the BAR ". The Court denied a charitable use exemption but found that the Osborn " is still a " residential

health care facility ` a portion of which [i.e., The Pavilion] is licensed by the New York State Department of Health and, therefore, is entitled to a hospital use exemption...albeit a partial use exemption...as measured by square footage `.

In Adult Home at Erie Station, Inc. v. Assessor of City of Middletown⁵³ the Court found that a not-for-profit adult home as defined in Social Services Law § 2(25) was used exclusively for charitable purposes pursuant to RPTL § 420-a(1)(a). " The evidence established that the petitioner accepts and maintains in residence individuals without regard to ability to pay, approximately, 90% of its residents are unable to afford the regular room rates charged in comparable facilities, and the petitioner has incurred deficits which are made up by contributions, subsidies and debt forgiveness from its parent corporation and affiliates `.

In United Church Residences of Fredonia v. Newell⁵⁴, a nonprofit corporation sought a RPTL § 420-a(1)(a) tax exemption for its 39 housing units for " very low income " residents. The Court granted the request " since fully 100 per cent of their residents require HUD assistance to pay their rent `.

In Otrada v. Assessor of the Town of Ramapo⁵⁵, a not-for-profit corporation " dedicated to the preservation of Russian culture, traditions and language " sought the restoration of a 100% RPTL 420-a(1)(a) tax exemption which had been reduced by the

Assessor to 67%. The Court restored the 100% exemption finding that the respondents had failed to carry their burden⁵⁶ in explaining why they had reduced it.

And in Sephardic Congregation of South Monsey v. Town of Ramapo, Congregation Or Josef v. Town of Ramapo, Shmiel v. Assessor of Town of Ramapo, and Jewish Inspiration, Inc. v. Assessor of the Town of Ramapo⁵⁷, the Court addressed the applications of several religious organizations seeking tax exemptions pursuant to RPTL §§ 420-a(1)(a) and 462 for houses used variously as synagogues, shuls, yeshivas, and residences for a congregation's Rabbi and his family.

ENDNOTES

1. Astoria Gas Turbine Power LLC v. Tax Commission of the City of New York, 7 N.Y. 3d 451, 857 N.E. 2d 510, 824 N.Y.S. 2d 189 (2006).

2. O'Shea v. Board of Assessors of Nassau, 2007 NY Slip Op 01195 (Ct. App. 2007), affq Briffel v. County of Nassau, 31 A.D. 3d 79, 817 N.Y.S. 2d 71 (2d Dept. 2006).

3. For a discussion of Selective Reassessment see Dickerson, Real Property Selective Reassessment: Annual Method Best, New York Law Journal, January 5, 2006, p. 4; Siegel, Reassessment on Sale, New York Law Journal, August 2, 2005, p. 16. In 2006 the issue of selective reassessment was addressed by the Courts in Parisi v. Assessor of the Town of Southampton, 2007 WL 1722019 (Suffolk Sup. 2007)(no selective reassessment found); Incorporated Village of Southampton v. Noa, 13 Misc. 3d 1210 (Suffolk Sup. 2006)(" the attack is focused on appraisal methodology rather than legal or illegal methodologies such as reassessment on sale only "); Kardos v. Ryan, 28 A.D. 3d 1020, 814 N.Y.S. 2d 336 (3d Dept. 2006)(selective reassessment found); McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup.

2006)(no selective reassessment found); Markim v. The Town of Orangetown, 6 Misc. 3d 1042 (Rockland Sup. 2005), 9 Misc. 3d 1115 (Rockland Sup. 2005), mod'd 11 Misc. 3d 1063 (Rockland Sup. 2006)(" Newly created property such as the subject eleven properties may be initially assessed at or near market value "); AKW Holding LLC v. Assessor of the Town of Clarkstown, 12 Misc. 3d 1160 (Rockland Sup. 2006)(selective reassessment found); Kaminsky v. Assessor of the Town of Ossining, 2006 WL 1628978 (West. Sup. 2006)(selective reassessment not found); Bock v. Assessor of the Town/Village of Scarsdale, 2006 WL 328503 (West. Sup. 2006)(no selective reassessment found); Joan Dale Young v. The Town of Bedford, 9 Misc. 3d 1115(A)(West. 2005)(**newly created property may be assessed at or near market " so long as the implicit policy is applied even-handedly to all similarly situated property "**); James Montgomery v. Board of Assessment Review of the Town of Union, 2006 WL 1549386 (3d Dept. 2006) ("...petitioners claim that the Town Assessor uses current market values to assess newly constructed homes but not older existing residential properties, thus creating two different classes of residential properties that are treated differently for purposes of taxation "); Wilson v. Dziedzic, 13 Misc. 3d 242, 818 N.Y.S. 2d 750 (Broome Sup. 2006) (" Reassessment of properties that have been improved is not improper; indeed, it would be unfair to other property owners to continue to tax property that has been improved without taking into account the additional value added. ")].

4. See Feiner v. New York State Office of Real Property Services, 25 A.D. 3d 1005, 807 N.Y.S. 2d 452 (3d Dept. 2006)(" Moreover, were we to grant petitioner's request that subject matter jurisdiction be transferred to this Court, we would still dismiss because ` individual taxpayers lack standing to challenge the methodology the Board used to calculate equalization rates "`); Town of Huntington v. New York State Board of Real Property Services, 33 A.D. 3d 620, 822 N.Y.S. 2d 151 (2d Dept. 2006) (" the Town of Huntington has standing to seek review...because it the town ` for which the rate or rates were established ` . However, the Town...failed to demonstrate that the methodology used by the State Board in determining the special equalization rate was not rational or that the special equalization rate of 0.76 was not supported by substantial evidence ").

5. See MRE Realty Corp. V. Assessor of Town of Greenburgh, 8 Misc. 3d 1027 (West. Sup. 2005), aff'd 33 A.D 3d 802, 822 N.Y.S. 2d 629 (2d Dept. 2006)(2d Dept. 2006)(" According to the statute's language, the three-year moratorium begins to run from the taxable status date of the ` most recent assessment under review "`); Redhead Properties, LLC v. Town of Wappinger, 11

Misc. 3d 1093 (Dutchess Sup. 2006)(additional allowance of \$100 for each of 76 tax lots illegally assessed pursuant to RPTL § 722(2)).

6. See Midway Shopping Center v. Town of Greenburgh, 11 Misc. 3d 1071 (West. Sup. 2006)(failure to comply with 22 NYCRR § 202.59(b),(d)(1) in serving on respondent " in triplicate...a copy of the verified or certified statement of the income and expenses on the property for each tax year under revenue ").).

7. See Commerce Drive Associates, LLC v. Board of Assessment Review of Town of Woodbury, 10 Misc. 3d 1071 (Orange Sup. 2006), aff'd 35 A.D. 3d 856, 825 N.Y.S. 2d 370 (2d Dept. 2006)(" cross motion to extend its time to serve the petition (granted) "). See also: Majaars Realty Assoc. v. Town of Poughkeepsie, 10 Misc. 3d 1061 (Dutchess Sup. 2005)(petitions dismissed for failure to serve Superintendent of Schools; jurisdictional defect); Matter of 275 N. Middletown Rd. LLP v. Kenney, 10 Misc. 3d 1067 (Rockland Sup. 2005)(service of Petition upon Secretary for Superintendent of Schools adequate service; late filing of proof of service ministerial act and excusable if no prejudice shown); Orange And Rockland Utilities, Inc., 11 Misc. 3d 1051 (Rockland Sup. 2006)(petitions dismissed for failure to serve Superintendent of Schools; late filing of proof of service ministerial act and excusable if no prejudice shown).

8. See Midway Shopping Center v. Town of Greenburgh, 11 Misc. 3d 1071 (West. Sup. 2006)(tenant had no standing to assert and prosecute tax certiorari claims on behalf of landlord owner of shopping center); Brookmar Corp. V. Tax Commissioner of the City of New York, 13 Misc. 3d 772 (N.Y. Sup. 2006)(" In order to have standing to challenge a tax assessment of property...the petitioner must be ' aggrieved ' by the assessment...Thus, to fall within the definition of an ' aggrieved ' party, one must have paid the taxes challenged as excessive ").

9. See Blueberry Hill Condominium v. Town of Ramapo, 12 Misc. 3d 1160 (Rockland Sup. 2006)(" since the aforesaid refunds were not paid within the requisite sixty...day period, the Petitioner is entitled to interest pursuant to the terms of the Order & Judgment as set forth in RPTL § 726(2) ").

10. See Schlesinger v. Town of Ramapo, 11 Misc. 3d 697 (Rockland Sup. 2006)(" Respondent has failed to address how an inspection of the subject premises in 2005 will accurately reflect the condition of the interior in 1999 ").

11. See Matter of Rockland County Sewer District No: 1, 13 Misc. 3d 1226 (Rockland Sup. 2006)(discussion of discovery in eminent domain and tax certiorari matters pursuant to CPLR § 408).

12. See Steel Los III/Goya Foods v. Board of Assessors of County of Nassau, __A.D. 3d__, 825 N.Y.S. 2d 715 (2d Dept. 2006)(" any credits due to Goya for PILOT payments resulting from reductions in the assessment of its real property for the tax years 1999 through 2002 are charges of the County...and cannot be used to reduce future PILOT payments to the (School) District "); Carousel Center Company v. City of Syracuse, 11 Misc. 3d 1061 (Onondaga Sup. 2006)(dispute between City and developers [whose " financing is (based upon the) issuance of PILOT-backed SIDA bonds "] over contingencies in " Ordinance 32 " enacted " to facilitate the development of the expansion ").

13. See Matter of Village of Spring Valley, 13 Misc. 3d 122 (Rockland Sup. 2006)(evidence of advance payments in eminent domain proceeding inadmissible at trial). See also: Matter of Village of Port Chester, 5 Misc. 3d 1031 (West. Sup. 2004)(" The purpose of real property tax refunds, however, is to compensate tax payers for paying more taxes than they should have, typically, several years ago. While such a windfall is welcome there is none of the urgency and, perhaps, even desperation, which condemnees face when their property is taken in a condemnation proceeding. This is why advance payments have been mandated, why advance payments should be paid sooner rather than later and why statutory interest of 6% should be imposed ").

14. See Consolidated Edison Company of New York, Inc. V. City of New York, 33 A.D. 3d 915, 823 N.Y.S. 2d 451 (2d Dept. 2006)(three power generation units and transmission facilities located on Staten Island); Orange & Rockland Utilities, Inc. v. Town of Havertsraw Assessor, 12 Misc., 3d 1194 (Rockland Sup. 2006) (Bowline Point Generation Station in the Town of Haverstraw); Mirant New York, Inc. v. Town of Stony Point Assessor, 13 Misc. 3d 1204 (Rockland Sup. 2006)(Lovett Generation Station located in Town of Stony Point).

15. VGR Associates LLC v. Assessor of the Town of New Windsor, 2006 WL 2851618 (Orange Sup. 2006)(Price Chopper Plaza in Town of New Windsor). See also: Midway Shopping Center v. Town of Greenburgh, 11 Misc. 3d 1071 (West. Sup. 2006)(lack of standing and failure to comply with filing and service requirements for verified income and expense statements per 22

NYCRR § 202.59(b),d(1)).

16. Johnson v. Kelly, 11 Misc. 3d 1081 (Orange Sup. 2006)(farm land in the Town of Goshen).

17. Village of Irvington v. Sokolik, 13 Misc. 3d 1220 (West. Sup. 2006)(condemnation proceeding; highest and best use valuation of 8,513 square feet or .195 acres of vacant land taken by Village of Irvington for construction of salt shed).

18. Earla Associates v. Board of Assessors of the City of Middletown, 13 Misc. 3d 1246 (Orange Sup. 2006)(276 unit garden apartment complex in City of Middletown).

19. Prospect Owners Corp. V. Tax Commission of the City of New York, 12 Misc. 3d 1177 (N.Y. Sup. 2006)(403 residential units and 3 commercial units known as 45 Tudor Place in New York City).

20. Radisson Community Association, Inc. v. Long, 28 A.D. 3d 88, 90 809 N.Y.S. 2d 323 (4th Dept. 2006)(common parcels located in the Town of Lysander valued in the aggregate at \$641,000 without discussion of the method of valuation).

21. JB Park Place Realty LLC v. Assessor of the Village of Bronxville, 13 Misc. 3d 1233 (West Sup. 2006)(" ` One-story commercial building containing 6,823 square feet ` occupying ` a midblock site...in the Village of Bronxville ").

22. Dale Joan Young v. Town of Bedford, 9 Misc. 3d 1107 (West. Sup. 2006)(single family home in Town of Bedford); McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006)(single family home in Town of Ossining).

23. Miriam Osborn Memorial Home Association v. The Assessor of the City of Rye, 14 Misc 3d 1209 (West. Sup. 2006).

24. Orange & Rockland Utilities, Inc. v. Town of Havertsraw Assessor, 12 Misc., 3d 1194 (Rockland Sup. 2006)(" In establishing Bowline's full market value this Court must be guided by its earlier decision [Orange and Rockland Utilities, Inc. v. Assessor of the Town of Haverstraw, 7 Misc. 3d 1017, 801 N.Y.S. 2d 238 (2005)] wherein the Petitioners sought " ` to amend its petitions [for the years 1995 through 2003] to conform them to the proof of the fair market value opined by (Mirant's) appraiser at trial ` ").

25. Id.

26. Radisson Community Association, Inc. v. Long, 28 A.D. 3d 88, 90 809 N.Y.S. 2d 323 (4th Dept. 2006).

27. VGR Associates LLC v. Assessor of the Town of New Windsor, 2006 WL 2851618 (Orange Sup. 2006)(" Respondents may not rely upon an appraised value [\$12,800,000 for 2002 and \$13,100,000 for 2003] which exceeds the equalized full value [\$9,915,000 for 2002 and \$11,180,000for 2003] which they established for the subject property ").

28. See Johnson v. Kelly, 11 Misc. 3d 1081 (Orange Sup. 2006)(appraisal for valuation of farm land stricken " for failing to comply with 22 NYCRR §§ 202.59(g)(2)(h) and failing to value the total assessment as required by (RPTL) § 502(3) ").

29. See Village of Irvington v. Sokolik, 13 Misc. 3d 1220 (West. Sup. 2006)(" An interesting though moot issue herein [since the Court has concluded a value for the subject property at its highest and best use of \$123,564.67, a figure above the assessed value of \$101,190] is whether the assessed value should be (1) considered a valuation floor or (2) some evidence of value or (3) no evidence of value ").

30. The Appraisal of Real Estate, Appraisal Institute, 12th Edition (2001), at pp. 471-495 (" Income-producing real estate is typically purchased as an investment, and from an investor's point of view earning power is the critical element affecting property value "). See also: Reckson Operating Partnership, L.P. v. Assessor of the Town of Greenburgh, 2 Misc. 3d 1005 (West. Sup. 2004)(" Both (appraisers) agreed that a buyer of income producing property purchases an income stream ").

31. The Appraisal of Real Estate, Appraisal Institute, 12th Edition (2001), pp. 569-570; Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets, American Society of Appraisers (2000), p. 179 (DCF is a method " most frequently developed on a debt-free, net cash flow basis...This technique measures the direct economic benefits derived from ownership, in the form of future cash inflows and outflows attributed to the property, stated at their present value).

32. The Appraisal of Real Estate, supra, at p. 147 (sales comparison approach as " A set of procedures in which a value indication is derived by comparing the property being appraised

to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sales prices of the comparables based on the elements of comparison. The sales comparison approach may be used to value improved properties...").

33. The Appraisal of Real Estate, supra, at pp. 349-351; Valuing Machinery and Equipment, supra, at p. 45 (" Using the cost approach, the appraiser starts with the current replacement cost of the property being appraised and then deducts for the loss in value caused by physical deterioration, functional obsolescence and economic obsolescence. The logic behind the cost approach is the principal of substitution: a prudent buyer will not pay more for a property than the cost of acquiring a substitute property of equivalent utility ").

34. Orange & Rockland Utilities, Inc. v. Town of Havertsraw Assessor, 12 Misc., 3d 1194 (Rockland Sup. 2006).

35. Mirant New York, Inc. v. Town of Stony Point Assessor, 13 Misc. 3d 1204 (Rockland Sup. 2006).

36. VGR Associates LLC v. Assessor of the Town of New Windsor, 2006 WL 2851618 (Orange Sup. 2006).

37. See e.g., Senpike Mall Company v. Town of New Hartford, 136 A.D. 2d 19, 23, 525 N.Y.S. 2d 104 (4th Dept. 1988).

38. Earla Associates v. Board of Assessors of the City of Middletown, 13 Misc. 3d 1246 (Orange Sup. 2006).

39. See e.g., Reckson Operating Partnership, LP v. Assessor of the Town of Greenburgh, 2 Misc. 3d 1005, 784 N.Y.S. 2d 923 (West. Sup. 2004).

40. Prospect Owners Corp. V. Tax Commission of the City of New York, 12 Misc. 3d 1177 (N.Y. Sup. 2006).

41. See e.g., In re River House-Bronxville v. Gallaway, 100 A.D. 2d 970 (2d Dept. 1984).

42. Village of Irvington v. Sokolik, 13 Misc. 3d 1220 (West. Sup. 2006).

43. See e.g., McCready v. Assessor of the Town of Ossining, 11 Misc. 3d 1086 (West. Sup. 2006)(" In 1967 the Gallows built a

beautiful contemporary style single family residence with a Hudson River view reminiscent of the cape...The 2005 Property Card also notes Riverview A+++...Respondent's Appraiser...counted the open space as assessable ambiance with a view of the Hudson River ").

44. Consolidated Edison Company v. City of New York, 33 A.D. 3d 915, 823 N.Y.S. 2d 451 (2d Dept. 2006).

45. In the minority view at 33 A.D. 3d 455-456 this methodology should not be applied to a " modernized plant " [" If the facility is capable of profitable operation, deduction for functional obsolescence based upon replacement cost is not appropriate "].

46. Orange & Rockland Utilities, Inc. v. Town of Havertstown Assessor, 12 Misc., 3d 1194 (Rockland Sup. 2006).

47. Mirant New York, Inc. v. Town of Stony Point Assessor, 13 Misc. 3d 1204 (Rockland Sup. 2006).

48. See e.g., Matter of Erie Boulevard Hydropower L.P. v. Town of Ephratah Board of Assessors, 2003 WL 211726636 (N.Y. Sup. 2003), aff'd 9 A.D. 3d 540, 779 N.Y.S. 2d 634 (3d Dept. 2004); Matter of Consolidated Edison Company of New York v. City of New York, Index No. 8564/98 (Kings Sup. 2004)(Slip. Op. pp. 5-6) (Hon. Michael L. Peace), aff'd 33 A.D. 3d 915, 823 N.Y.S. 2d 451 (2d Dept. 2006); Matter of TBG Cogen Partners v. The Assessor of the County of Nassau, New York Law Journal, August 15, 2001, p. 21, col. 3 (Nassau Sup. 2001)(J. Winslow).

49. Matsuda, Boards holding votes on \$275M Mirant settlement, The Journal News, December 13, 2006 (" Taxing jurisdictions involved in a legal dispute with the energy giant Mirant would pay a total of about \$275 million under a recent settlement proposal ").

50. Park Place Realty LLC v. Assessor of The Village of Bronxville, 13 Misc. 3d 1233 (West. Sup. 2006).

51. See e.g., Mirant New York, Inc. v. Town of Stony Point Assessor, 13 Misc. 3d 1204 (Rockland Sup. 2006)(" the Petitioners' purchase in July of 1999 of Bowline [\$193,800,00] and Lovett [\$213,580,000] occurred within the context of arm's length transactions and is the best evidence of value for tax year 2000 "); 325 Highland LLC v. Assessor of the City of Mount Vernon, 5 Misc. 3d 1018 (West. Sup. 2004)(" It is well settled that the purchase price set in the course of an arm's length

transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the highest rank to determine the true value of the property at that time ").

52. Miriam Osborn Memorial Home Association v. Assessor of the City of Rye, 14 Misc. 3d 1209 (West. Sup. 2006). See also: Serbaroli, Revoking a Hospital's Property Tax Exemption, New York Law Journal, January 31, 2007, p. 3.

53. Adult Home At Erie Station v. Assessor of the City of Middletown, 2007 WL 102477 (2d Dept. 2007), rev'g 8 Misc. 3d 1010 (Orange Sup. 2005).

54. United Church Residences of Fredonia v. Newell, 12 Misc. 3d 1193 (Chautauqua Sup. 2006).

55. Otrada v. Assessor of the Town of Ramapo, 11 Misc. 3d 1058 (Rockland Sup. 2006), modifying 9 Misc. 3d 1116 (Rockland Sup. 2005).

56. In a situation where a municipality withdraws a previously granted tax exemption, it is the municipality that bears the burden of proving that the real property is subject to taxation [See e.g. Miriam Osborn Memorial Home Assn. v. Assessor of the City of Rye, 275 A.D.2d 714, 715, 713 N.Y.S.2d 186 (2d Dept. 2000) (" Where as here, a municipality seeks to withdraw an existing exemption under RPTL 420-a(1), the burden is with the municipality to prove that the petitioner is no longer entitled to the exemption ")].

57. Sephardic Congregation of South Monsey v. Town of Ramapo, 2007 WL 43571 (Rockland Sup. 2007), Congregation Or Josef v. Town of Ramapo, 13 Misc. 3d 1214 (Rockland Sup. 2006), Shmiel v. Assessor of Town of Ramapo, 13 Misc. 3d 1215 (Rockland Sup. 2006) and Jewish Inspiration, Inc. v. Assessor of the Town of Ramapo, 12 Misc. 3d 1169 (Rockland Sup. 2006).

