

**Supreme Court of the State of New York
Appellate Division: Second Judicial Department**

D21037
O/prt

_____AD3d_____

Argued - October 16, 2008

STEVEN W. FISHER, J.P.
HOWARD MILLER
MARK C. DILLON
RANDALL T. ENG, JJ.

2007-04151

DECISION & ORDER

In the Matter of Public Storage, Inc., respondent,
v Board of Assessors, et al., appellants.

(Index No. 401245/04)

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Karen Hutson of counsel), for appellants.

Herman Katz Cangemi & Clyne, LLP, Garden City, N.Y. (Jay M. Herman, Kevin M. Clyne, and Elene Michaels of counsel), for respondent.

In a consolidated proceeding pursuant to Real Property Tax Law article 7 to review real property tax assessments for the tax years 1999/2000 through 2006/2007, the Board of Assessors, Assessor of County of Nassau, and the Board of Assessment Review, appeal from so much of an order and judgment (one paper) of the Supreme Court, Nassau County (De Maro, J.), entered March 27, 2007, as, after a nonjury trial and upon a decision of the same court entered February 14, 2007, granted the petition to the extent of awarding a reduction in the tax assessments for the years 1999/2000 through 2006/2007, based upon a 20% deduction to the property's gross income, and directed that the assessment rolls be corrected and any tax overpayments be refunded.

ORDERED that the order and judgment is modified, on the law, by deleting so much of the third decretal paragraph as assessed the value of the subject property, and set the amounts of reduction, as follows:

Tax Year	Final Total Assessed Value	Amount of Reduction
1999/00	\$199,185	\$50,115
2000/01	\$193,530	\$59,980
2001/02	\$226,000	\$96,100
2002/03	\$257,057	\$65,103
2003/04	\$39,923	\$14,628
2004/05	\$39,923	\$13,277
2005/06	\$43,037	\$10,163
2006/07	\$40,714	\$16,010

and substituting therefor a provision assessing the value of the subject property, and setting the amounts of reduction as follows:

Tax Year	Final Total Assessed Value	Amount of Reduction
1999/00	\$250,470	\$0
2000/01	\$222,180	\$31,330
2001/02	\$273,280	\$48,880
2002/03	\$307,200	\$14,960
2003/04	\$50,490	\$4,061
2004/05	\$50,490	\$2,710
2005/06	\$56,848	\$0
2006/07	\$54,043	\$2,681;

as so modified, the order and judgment is affirmed insofar as appealed from, with costs to the appellants.

Public Storage, Inc. (hereinafter Public Storage), commenced tax review proceedings pursuant to Real Property Tax Law article 7 challenging the tax assessments made by the Board of Assessors of Nassau County and the Assessment Review Commission of Nassau County (hereinafter together the County) for the tax years 1999/2000 through 2006/2007, on a parcel of real property which Public Storage owns and upon which it operates a self-storage facility. The County's appraiser agreed that the property was overassessed and recommended certain reductions which, after a nonjury trial, were adjusted by the court to account for certain intangible business assets claimed by Public Storage to have enhanced the income value of its property. Although unacknowledged by the court, however, the County's appraisal had accounted for any enhanced income value derived from these intangible business assets. We find that the 5% reduction in the gross income generated at the subject property, along with the imputation of certain operating expenses, which were applied by the County to account for the intangible business assets, was appropriate under the circumstances of this case to arrive at the true value of the property (*see Matter of Allied Corp. v Town of Camillus*, 80 NY2d 351, 356; *Matter of Merrick Holding Corp. v Board of Assessors of County of Nassau*, 45 NY2d 538, 541;

People ex rel Hotel Paramount Corp. v Chambers, 298 NY 372, 374; *Matter of Mill Riv. Club v Board of Assessors*, 48 AD3d 169, 171). Moreover, this is the only calculation of the value of the claimed intangible business assets that is supported by the record (*cf. Matter of Katz v Assessor of Vil./Town of Mount Kisco*, 82 AD2d 654, 657).

FISHER, J.P., MILLER, DILLON and ENG, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court