

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

D33642
Y/ct

_____AD3d_____

Argued - November 15, 2011

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2010-05262
2010-05264
2010-05266

DECISION & ORDER

In the Matter of 194 Main, Inc., respondent,
v Board of Assessors, et al., appellants.

(Index Nos. 403115/07, 409181/08, 404086/09)

John Ciampoli, County Attorney, Mineola, N.Y. (Brian Libert, Dennis J. Saffran, and Robert Van der Waag of counsel), for appellants.

Cronin Cronin & Harris, Mineola, N.Y. (Erin A. O'Brien of counsel), for respondent.

In three related proceedings pursuant to Real Property Tax Law article 7 to review real property tax assessments for the 2007-2008, 2008-2009, and 2009-2010 tax years, the Board of Assessors and the Assessment Review Commission of the County of Nassau appeal from (1) an order of the Supreme Court, Nassau County (Adams, J.), dated March 25, 2010, which granted the petitioner's motion for summary judgment on the petition relating to the 2007-2008 tax year and directed them to reclassify the subject property from class four to class one, recalculate the petitioner's tax liability for that year, and refund all overpaid taxes, (2) a second order of the same court, also dated March 25, 2010, which granted the petitioner's motion for summary judgment on the petition relating to the 2008-2009 tax year and directed them to reclassify the subject property from class four to class one, recalculate the petitioner's tax liability for that year, and refund all overpaid taxes, and (3) a third order of the same court, also dated March 25, 2010, which granted the petitioner's motion for summary judgment on the petition relating to the 2009-2010 tax year and directed them to reclassify the subject property from class four to class one, recalculate the petitioner's tax liability for that year, and refund all overpaid taxes.

January 24, 2012

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ORDERED that the orders are affirmed, with one bill of costs.

The Supreme Court properly determined that the petitioner's property should be reclassified from class four to class one (*see* RPTL 1802[1]). The subject property is situated in a residential zone, and the petitioner's application for a variance to use the property commercially was denied. Under these circumstances, the property should be taxed as class one vacant land (*see* RPTL 1802[1][e]; *Matter of Shore Dev. Partners v Board of Assessors*, 82 AD3d 988), as it is not being put to use in a manner which is materially beneficial to the petitioner (*cf. Matter of Richmond County Country Club v Tax Commn. of City of N.Y.*, 53 AD3d 661, 663). "The valuation of property is determined by its State as of the taxable date, and may not be assessed on the basis of some future contemplated use" (*Matter of General Elec. Co. v Macejka*, 117 AD2d 896, 897; *see Matter of Miriam Osborn Mem. Home Assn v Assessor of City of Rye*, 275 AD2d 716, 717). Since the petitioner established its prima facie entitlement to judgment as a matter of law on its separate petitions seeking reclassification of the subject property as class one for the 2007-2008, 2008-2009, and 2009-2010 tax years (*see Zuckerman v City of New York*, 49 NY2d 557, 560), and the appellants failed to raise a triable issue of fact in opposition thereto (*id.*), the Supreme Court properly granted the petitioner's motions for summary judgment on the petitions.

RIVERA, J.P., LEVENTHAL, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court