

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1253

CA 12-00514

PRESENT: SMITH, J.P., CENTRA, LINDLEY, AND WHALEN, JJ.

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IN THE MATTER OF ONTARIO SQUARE REALTY CORP.,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ASSESSOR OF THE TOWN OF FARMINGTON, DONNA  
LAPLANT, RESPONDENT-RESPONDENT.

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PANZARELLA & COIA, P.C., ROCHESTER (CHAD M. HUMMEL OF COUNSEL), FOR  
PETITIONER-APPELLANT.

BOYLAN CODE LLP, ROCHESTER (SHEILA M. CHALIFOUX OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

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Appeal from an order of the Supreme Court, Ontario County  
(Kenneth R. Fisher, J.), entered January 26, 2011 in a proceeding  
pursuant to RPTL article 7. The order granted the motion of  
respondent to dismiss the petition.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: Petitioner commenced this RPTL article 7 proceeding  
seeking review of the real property tax assessment of its property.  
Supreme Court properly granted respondent's motion to dismiss the  
petition on the ground that petitioner failed to serve the notice of  
petition and petition within the applicable time period provided in  
CPLR 306-b. In opposing the motion, petitioner's attorney submitted  
an affirmation seeking an extension of time for service in the  
interest of justice. Contrary to petitioner's contention, it "was  
required to serve a notice of cross motion in order to obtain the  
affirmative relief of an extension of time to serve the [petition with  
a notice of petition or an order to show cause] upon [respondent]  
pursuant to CPLR 306-b" (*Lee v Colley Group McMontebello, LLC*, 90 AD3d  
1000, 1000-1001; see *DeLorenzo v Gabbino Pizza Corp.*, 83 AD3d 992,  
993). In any event, the court properly considered all of the relevant  
factors in determining whether to extend the time for service in the  
interest of justice (see CPLR 306-b; *Leader v Maroney, Ponzini &  
Spencer*, 97 NY2d 95, 105-106; *Brown v Wilson Farms, Inc.*, 52 AD3d  
1324, 1324-1325), and the court properly denied petitioner's request  
for that relief (see *Eggleston v A.C. & S., Inc.*, 17 AD3d 1167, 1167-  
1168).

Entered: November 9, 2012

Frances E. Cafarell  
Clerk of the Court