

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION UNDER
ARTICLE 7 OF THE REAL PROPERTY TAX LAW
BY BROADWAY RINKS LTD. PARTNERSHIP
(HOLIDAY TWIN RINKS),

Petitioner,

**MEMORANDUM
DECISION**

vs.

Index Nos. 2006-6551
2007-7149
2008-8045

ASSESSOR, TOWN OF CHEEKTOWAGA AND
THE BOARD OF ASSESSMENT REVIEW OF THE
TOWN OF CHEEKTOWAGA, COUNTY OF ERIE
AND STATE OF NEW YORK,

Respondents,

and

CHEEKTOWAGA CENTRAL SCHOOL DISTRICT,

Intervenor.

FOR REVIEW OF THE 2006-2007, 2007-2008 and
2008-2009 TAX ASSESSMENT OF CERTAIN
REAL PROPERTY IN THE SAID TOWN OF
CHEEKTOWAGA, NEW YORK

APPEARANCES:

WOLFGANG & WEINMANN
Attorneys for Petitioner
Peter A. Weinmann, Esq., of Counsel

HUGHES AND WRAY, LLP
Attorneys for Respondent Town of Cheektowaga
Michael J. Hughes, Esq., of Counsel

CURRAN, J.

These three (3) proceedings to review the assessment of real property were consolidated for trial which was conducted on January 13 and 14, 2009. Post-trial submissions were made in March of 2009.

Petitioner asserts that for each of the three tax years which are the subject of these proceedings, the real property in question was subject to an excessive assessment because full assessed valuation of the real property exceeds the full value of the real property. The property in question is owned by the petitioner and is a two-rink indoor ice skating facility located at 3465 Broadway Road, Cheektowaga, Erie County, New York.

Petitioner operates “Holiday Twin Rinks” at the subject property. It is located in a “light manufacturing” district and is situated on 11.10 acres of real property. The building area is 81,449 square feet. The building was constructed in the early 1970's. The full value assessment and taxable status dates at issue are as follows:

May 1, 2006:	\$1,216,923.00
May 1, 2007:	\$1,284,508.00
May 1, 2008:	\$1,284,508.00.

Petitioner asserts that the market value of the subject property as of each taxable status date is \$675,000.00. Respondent asserts that the market value is \$1,450,000.00. The Court must value the subject property between petitioner’s appraisal amount and the full assessment value actually employed by the respondent (*Shubert Org., Inc. v Tax Commn. of New York*, 60 NY2d 93, 95 [1983]).

The parties agree that the appraisers who testified in these proceedings are qualified as experts to render opinions as to the market value of the subject property.

Petitioner's appraiser used the sales comparison approach and the income approach.

Respondent's appraiser employed the sales comparison approach and the cost approach.

Respondent has criticized petitioner's use of the income approach because the subject property bears more characteristics of an owner-occupied property for which the income approach is unsuitable. Moreover, respondent asserts that the income approach employed by petitioner's appraiser improperly relies upon two (2) properties which are located significantly outside the geographic territory of the subject property.

Petitioner has criticized respondent's use of the cost approach because such an approach ordinarily should be used only for a "special-purpose property" which is defined as a property with a limited market and unique physical design. According to the petitioner, the subject property does not meet this definition.

The appraisers agree that the highest and best use of the subject property is its continued use as an ice skating rink facility. Both appraisers also indicate that the property would have usefulness as a warehouse or other industrial facility.

Petitioner's appraiser used five (5) comparables for his sales comparison approach. Three (3) of those comparables are located in Erie County, whereas one (1) is located in Ohio and the other is located California. With respect to the income approach, petitioner's appraiser used six (6) properties, four (4) of which are in Erie County and the other two (2) are located in Ohio. Petitioner's appraiser looked outside the State of New York for

both approaches because he could not locate any sales of ice skating rinks or comparable ice rink facilities generating income in the immediate geographic area.

Respondent's appraiser used ten (10) comparables to support his sales comparison approach. All of these are located in Erie County. With respect to the cost approach, respondent's appraiser estimated the value of the land on which the ice rink building is located, estimated the amount of depreciation, calculated site improvement costs and incorporated entrepreneurial profit. The cost approach necessarily makes assumptions with respect to the effective age of the building which in turn impacts the depreciation calculation.

CONCLUSIONS

The threshold inquiry is whether the petitioner has met its initial burden to come forward with substantial evidence of a "different yet credible valuation of its property" (*Matter of FMC Corp. v Unmack*, 92 NY2d 179, 191 [1998]). Here, through the use of the sales comparison approach buttressed by the income approach, petitioner has "proffered substantial evidence" to demonstrate that "a valid dispute exists concerning the value" of the subject property (*Matter of FMC Corp.*, 92 NY2d at 186; *Ulster Bus. Complex, LLC v Town of Ulster*, 293 AD2d 936, 938 [3d Dept 2002]). The evidence introduced by petitioner thereby overcomes the presumption of validity afforded to the assessor's property valuation (*Farash v Smith*, 59 NY2d 952, 955 [1983]).

Although petitioner has met its initial threshold of proof, it is still incumbent on the petitioner to establish by a preponderance of the evidence that the fair market value is less than the full assessed value (*Myron Hunt/Shaker Loudon Assocs. v Bd. of Assessment Review*, 6 AD3d 953, 955 [3d Dept 2004]). In this regard, it is appropriate to "take into account any

factor effecting a property's marketability" (*Commerce Holding Corp. v Bd. of Assessors*, 88 NY2d 724, 729 [1996]), as long as the Court seeks to arrive at a "fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc" (*Allied Corp. v Camillus*, 80 NY2d 351, 356 [1992]).

The parties essentially agree that the best approach to value under these circumstances is the sales comparison approach. Petitioner has conceded that the income approach would not in itself be appropriate by arguing in its post-trial brief that at most the income approach should be used to buttress the sales comparison approach. Further, it appears that respondent has effectively withdrawn its reliance on the cost approach as it was not addressed in its post-trial brief. The Court concludes that the sales comparison approach is the best valuation methodology because: (1) the income approach used by petitioner is unsubstantiated; and (2) the cost approach used by respondent is inapplicable because the subject real property is not a "special-purpose property" as it could be used for other warehouse and/or industrial purposes.

Petitioner's evidence in support of the sales comparison approach relies on three (3) industrial/warehouse/commercial properties in Erie County, New York. In light of the absence of sales of ice skating rinks in Erie County within a relevant time period, the Court agrees with petitioner that the best available comparison is to these types of facilities. Respondent cannot dispute this conclusion because it too has relied upon sales comparisons involving industrial/warehouse/commercial facilities. Accordingly, when viewing the three (3) comparables relied upon by petitioner located within Erie County, New York, it is evident that the full valuation employed by respondent is excessive. In this analysis, the Court has not

employed the sales comparable used by petitioner in California because it is much too far outside the relevant geographic area and is not otherwise comparable in terms of age and condition. While the Court has considered the sales comparable located in a suburb of Cleveland, Ohio, the Court nevertheless acknowledges that the Ohio property also is in a different condition from the subject property and is not as directly comparable as the facilities relied upon by petitioner located in Erie County, New York.

Having concluded that the full value assessment used by the respondent is excessive as of each of the three taxable status dates, the Court has considered all of the evidence submitted by petitioner and respondent. In particular, the Court is cognizant of a number of negative factors affecting the marketability of the subject property. First, the structure housing the ice rink facility is quite old and has approximated its full useful life. Second, the subject property is located in a manufacturing zone in a town and county which has been experiencing a significant economic downturn for many years, particularly for manufacturing facilities. Third, the land upon which the ice rink facility is located has poor frontage and a parking area that would require a significant investment of money to repair and improve. Fourth, the interior and exterior of the building show significant wear and tear which not only underscores the age of the building but also the necessary expenses needed to continue employing the building to its highest and best use.

Based on all of the evidence before the Court, and in consideration of the post-trial briefs submitted by the parties, the Court concludes that the full value of the property as of each of the taxable status dates is \$1,050,000.00. Respondent is left with the task of applying the appropriate equalization rate for each of the tax years to arrive at the appropriate amount of

tax due from the petitioner for those years. This decision, of course, is applicable to any taxing authority that collected taxes on the subject property. Further, to the extent that there has been an overpayment of any such taxes, all of the respondents are directed to refund any overpayments to petitioner.

Settle Orders/Judgments.

DATED: July 24, 2009

HON. JOHN M. CURRAN, J.S.C.