

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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MATTER OF THE APPLICATION UNDER ARTICLE 7  
of the REAL PROPERTY TAX LAW by  
LEGACY HEALTH CARE,

Petitioner,

**MEMORANDUM**  
**DECISION**

vs.

Index No. 3317/08

COMMISSIONER OF ASSESSMENT AND  
TAXATION OF THE CITY OF BUFFALO AND  
THE BOARD OF ASSESSMENT REVIEW  
OF THE CITY OF BUFFALO,

Respondents.

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BEFORE: **HON. JOHN M. CURRAN, J.S.C.**

APPEARANCES: **WOLFGANG & WEINMANN**  
Attorneys for Petitioner  
Peter Allen Weinmann, Esq., of counsel

**CORPORATION COUNSEL**  
**ALISA A. LUKASIEWICZ**  
Attorneys for Respondents  
Gregory A. Heeb, Esq., Assistant Corp. Counsel  
Cavette Chambers, Esq., Assistant Corp. Counsel

**CURRAN, J.**

This matter came before the Court upon a motion to dismiss the petition for review of a real property tax assessment on the basis of Real Property Tax Law § 727. Upon due consideration, the Court denies the motion in its entirety.

## Background

The parties agree that this motion presents a question of law for the Court, and that the material facts are undisputed. Previously, an entity entitled Ridgeview Manor, LLC filed a petition pursuant to article 7 of the Real Property Tax Law (RPTL) challenging the assessment for commercial property located at 298-300 Dorrance Avenue in the City of Buffalo for the years 2006-2007 (Heeb Affid., Exhibit A). A nursing home occupies the property (*see* Petition ¶ 2). William R. Zacher, a member of Ridgeview Manor, LLC, verified the petition (Heeb Affid., Exhibit B). That proceeding was settled by the parties, a stipulation of settlement was executed, and an order signed by Justice Devlin on August 6, 2007 (*id.*, Exhibit A). It was agreed that the assessment of the property for the years 2006-2007 and 2007-2008 would be reduced to Three Million Dollars (\$3,000,000.00) (*id.*). In addition, it was agreed that RPTL § 727 applied to the order, including any exceptions thereto (*id.*).

The City issued the Final Assessment Roll on March 1, 2007 for the years 2007-2008, and on March 1, 2008, for the years 2008-2009, reflecting the assessed value of the property at issue as \$3,000,000 (Kennedy Affid. ¶ 6; Memo of Law at 3).

According to the current Commissioner of the Department of Assessment and Taxation, Martin F. Kennedy, the City of Buffalo participates in an annual real property reassessment program administered by the New York State Office of Real Property Service (hereinafter ORPS) (Kennedy Affid. ¶ 9; *see* RPTL § 1573). In compliance with that program and the City's annual reassessment plan, City Assessors analyzed all of the locally assessed properties and "brought all values to 100% of full value on the 2008-2009 roll" (Kennedy Affid.

¶ 10). However, no changes were made to the subject property or to any other similarly situated properties in the same valuation district on the 2008-2009 final assessment roll (Kennedy Affid. ¶ 10).

On March 26, 2008, nonetheless, an agent of Legacy Health Care, William R. Zacher, instituted a proceeding pursuant to article 7 of the RPTL for review of the 2008-2009 tax assessment for the subject property. The proceeding seeks to have the assessment reduced to \$1,653,750 (*see* Petition ¶ 10). The City moved to dismiss.

### Discussion

RPTL § 727 (1) provides:

[W]here an assessment being reviewed pursuant to this article is found to be unlawful, unequal, excessive or misclassified by final court order or judgment, the assessed valuation so determined shall not be changed for such property for the next three succeeding assessment rolls prepared on the basis of the three taxable status dates next occurring . . . .

(RPTL § 727 [1]). In other words, if a court order determines that an assessment was excessive, for example, and orders a particular valuation by decision or by stipulation of the parties, the respondent cannot raise that assessment for three years, nor may the petitioner challenge that assessment for the next three taxable status dates (*see generally Matter of Owens Corning v Board of Assessors of Town of Bethlehem*, 279 AD2d 118, 120 [3<sup>rd</sup> Dept 2001]). According to the statutory language, the moratorium begins to run from the taxable status date of the “most recent assessment under review in the proceeding subject to [the] final order or judgment”

(RPTL § 727 [1]; *see Matter of MRE Realty Corp. v Assessor of the Town of Greenburgh*, 33 AD3d 802, 804 [2d Dept 2006]).

There are nine statutory exceptions to the moratorium of section 727 (1). Unless one of the exceptions applies with respect to a property concerning which there has been a petition and judgment or a stipulation of judgment, “[n]o petition for review of the assessment on such property shall be filed while the provisions of subdivision one . . . section are applicable to such property” (RPTL § 727[3]). The exceptions include the following:

2. An assessment on property subject to the provisions of subdivision one of this section may be changed on an assessment roll where:
  - (a) There is a revaluation or update of all real property on the assessment roll

(RPTL § 727 [2] [a]).

On its face, the parties’ 2007 stipulation and order bars the instant proceeding. Petitioner contends, however, that a recent decision by the Court of Appeals “eviscerated” the effect of RPTL § 727(1) and (3), in municipalities like the City of Buffalo that participate in the ORPS annual reassessment program (*see* RPTL § 1573 [2] [b] [i]). Such annual reassessment, Petitioner contends, is a “revaluation or update” under the exception sufficient to lift the moratorium.

*In Matter of Malta Town Centre I, Ltd. v Town of Malta Board of Assessment Review* (3 NY3d 563 [2004]), the Court of Appeals concluded that proof that a municipality undertook an annual reassessment under RPTL § 1573 (2) (b) (i) is evidence of a “revaluation or update of all real property on the assessment roll” for the purposes of an exception to the

moratorium under RPTL § 727(1) (*see Matter of Malta Town Centre I, Ltd.*, 3 NY3d at 565, citing RPTL § 727 [2] [a]). In other words, an “RPTL § 1573 reassessment can constitute an exception under RPTL § 727” sufficient to lift the moratorium of RPTL § 727 (1) (*Matter of Malta Town Centre I, Ltd.*, 3 NY3d at 569). The Court of Appeals determined that the words “revaluation” and “update” in section 727 (2) (a ) have the same meaning as they do under RPTL § 102 [12-a]). Under that section:

“Revaluation”, “reassessment” or “update” means a systematic review of the assessments of all locally assessed properties, valued as of the valuation date of the assessment roll containing those assessments . . .

(RPTL § 102 [12-a]).

The City concedes that it undertook under RPTL § 1573 the “statutorily required analysis of all locally assessed properties and brought all values to 100% of full value” on the 2008-2009 roll (Kennedy Affid. ¶ 10). However, no changes were made to the assessment of the subject property or to that of any other similarly situated properties in the same valuation district on the 2008-2009 final assessment roll, and, according to the Commissioner, no disparity between the subject property and other similarly situated properties was created as result of the analysis (*id.* ¶ 11). The Petitioner does not contest this assertion (*see* Weinmann Affid. ¶ 3).

Nonetheless, the Court agrees with Petitioner that *Malta* applies to the instant petition. The exception to application of the moratorium due to revaluation or update applies even though the assessed value of the property at issue did not change with that revaluation or

update (see *Matter of Owens Corning v Board of Assessors of the Town of Bethlehem*, 279 AD2d 118, 120 [3<sup>rd</sup> Dept 2001]; see also *Matter of Colonie Plaza, Inc. v Assessor of the Town of Colonie*, 15 AD3d 830, 832 [3<sup>rd</sup> Dept 2005], *lv dismissed* 5 NY3d 746 [2005]).

In *Owens Corning*, the town had conducted a town-wide revaluation of the assessment roll, but had made no change to the petitioner's assessment, which had previously been reduced by stipulated judgment. The Court held that the exception applied to remove the restriction upon the petitioner from challenging its assessment, which it believed should have been further reduced, despite the fact that the stipulated assessment had not been changed by the town. The determination was based upon an analysis of the statute in light of its legislative history (*id.* at 120). The Court stated that "a town-wide revaluation of the assessment roll could justify a challenge by a taxpayer where, for example, the ratio has decreased or the taxpayer's assessment relative to other taxpayers has changed" (*id.* at 121), and Petitioner here should not have to rely upon the City's assertion that similarly situated properties were similarly and equitably assessed, but should be entitled to challenge that assertion through this petition.

Further, given the volatility in the real property markets, it would not be a surprise if the market values of some properties fell, and property owners should not have to depend upon the municipality to reduce their assessments, through one of its annual analyses under RPTL § 1573, but rather should be able to challenge those assessments with their own petitions, under the exception to the moratorium under RPTL §727(2) for a city wide revaluation or reassessment.

The motion is, therefore, denied. Petitioner shall draft an order and settle it with respondent, and the parties shall appear for a preliminary conference on **Monday, April 6, 2009 at 3:00 p.m.**

DATED: March 6, 2009

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