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 SHERIDAN DEVELOPMENT ASSOCIATES, INC.

Petitioner

vs.

MEMORANDUM DECISION

Index No. 6777/07

ASSESSOR FOR THE TOWN OF TONAWANDA, NY, BOARD OF ASSESSMENT REVIEW FOR THE TOWN OF TONAWANDA, NY and THE TOWN OF TONAWANDA, NY

Respondents

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

APPEARANCES: **Hiscock & Barclay, LLP**
Attorneys for Petitioner
Bruce S. Zeftel, Esq., of Counsel

Damon & Morey, LLP
Attorneys for Respondents
James Balcarczyk, II, Esq., of Counsel

CURRAN, J.

Before the Court is respondents' motion to dismiss the petition on the ground that the petitioner has willfully refused to provide information requested by the Board of Assessment Review for the Town of Tonawanda.

On June 5, 2007, petitioner filed a complaint on the real property assessment for 2007 with respect to property located at 1717 Sheridan Drive. The complaint alleges theories

of unequal assessment and excessive assessment and seeks a reduction of the assessment on the petitioner's property from $2,000,000.00 to $1,050,000.00. On or about June 6, 2007, after receiving petitioner's complaint, the Board of Assessment Review sent a letter to the petitioner requesting that the petitioner provide it with various documents by June 20, 2007, including the following: (1) current rent roll; (2) copy of most recent survey; (3) copies of all leases and subleases currently in effect; (4) construction costs including "soft" costs; and (5) copies of any appraisals done in the last five years. The letter specifically states that willful neglect or refusal to provide the information requested will result in dismissal of the complaint.

Following that request, on June 19, 2007, petitioner's representative, Paul Steimle, sent a letter to the Board of Assessment Review addressing the items identified by the Board of Assessment Review. The response provided some additional information and indicated that petitioner was working to obtain additional information "but will not have them by your June 20, 2007 deadline request. We can provide them at a later date if you still require them." Upon receipt of that letter, the Board of Assessment Review determined that the petitioner's failure to provide the requested documentation was willful and justified dismissal of the petition. The petition was therefore dismissed on or about June 21, 2007 and a Notice of Determination of the Board of Assessment Review dismissing the complaint was sent to petitioner on that date.

In opposition to the motion, Mr. Steimle states that some of the information sought by the Board of Assessment Review had already been provided with the initial complaint. Mr. Steimle further claims that he had fully responded to the Board of Assessment Review's demand and asserts that some of the requests for documentation were irrelevant or

did not exist. Specifically, Mr. Steimle states that leases and subleases would add nothing to the analysis, blanket requests for appraisals are inappropriate, and a recent survey and appraisal did not exist. Finally, Mr. Steimle asserts that his letter "specifically sought an extension of time to respond and a further opportunity to secure the requested information," and he believes that this negates the claim of a desire to frustrate administrative review.

Real Property Tax Law § 525 (2) (a) states: "If the person whose real property is assessed, or his or her agent or representative, shall willfully neglect or refuse to attend and be so examined, or to answer any question put to him or her relevant to the complaint or assessment, such person shall not be entitled to any reduction of the assessment subject to the complaint."

"The assessors are charged with responsibility of investigating the necessary facts upon which to establish a proper assessment roll. Once the roll is completed, it is presumed to be accurate and free of error. If a taxpayer contends otherwise, then the burden is upon him to demonstrate that fact to the assessors. It is not sufficient for the taxpayer to assert merely the conclusions of illegality or error, he must indicate where error exists. To that end, the members of the board are entitled to view the whole matter, to ask questions and examine the records which are reasonably necessary to resolve the issue. It is for the board, not the taxpayer, to determine what information is material to the proceeding. While the proceeding may appear inquisitional to the taxpayer, the boundaries of the inquiry are broad and if the questions are reasonably necessary and material to determining issues of tax exposure or assessed value for the property, they are proper" (*Grossman v Bd. of Trustees of the Vil. of Geneseo*, 44 AD2d 259, 263 [4th Dept 1974]). The board is not limited to the information

which the taxpayer himself decides is material and he is answerable for his refusal, whether it is based upon advice of counsel or on a position that the information requested is not material to the approach of valuation relied upon (*See Grossman,* 44 AD2d at 263).

The administrative review process "is not intended to be an idle exercise but, rather, it is designed to seriously address claimed inequities and adjust them amicably if it is possible to do so. If the noncompliance with the request for additional information by the board of assessment review was occasioned by a desire to frustrate administrative review, then the court should dismiss the petition" (*Gelber Enters., LLC v Williams*, 41 AD3d 1207, 1208 [4th Dept 2007]).

"As the Court of Appeals has recently reiterated, Real Property Tax Law § 525 (2) will preclude a party from seeking an adjustment in a real estate tax assessment only if the failure to disclose requested information is willful. Courts have therefore refused to dismiss judicial challenges to realty assessments absent proof that the non-compliance was occasioned by a desire to frustrate administrative review" (*Chester Mall Partners v Village of Chester*, 239 AD2d 414, 414 [2d Dept 1997]; *Curtis/Palmer Hydroelectric Co., LP v Town of Corinth*, 306 AD2d 794, 796 [3d Dept 2003]; *Fifth Ave. Off. Ctr. Co. v City of Mount Vernon*, 89 NY2d 735, 741-742 [1997]).

Although petitioner could have more clearly stated its request for additional time to respond to the Board of Assessment Review's demand for further information, the Court finds that petitioner's efforts to respond to the request were, in the main, reasonable and did not rise to the level of willful non-compliance intended to frustrate administrative review (*see Chester Mall Partners,* 239 AD2d at 415).

Accordingly, respondents' motion to dismiss the petition is denied. Petitioner's counsel should settle the order with respondents' counsel and a pretrial conference shall be held on **Monday, February 4, 2008 at 2:00 p.m.**

DATED: January 7, 2008

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