

NEW YORK STATE SUPREME COURT
WESTCHESTER COUNTY

**FILED
AND ENTERED
ON
November 8, 2006
WESTCHESTER
COUNTY CLERK**

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In The Matter of the Application of:
JB PARK PLACE REALTY LLC,

Index No: 06/06380

Petitioner,

-against-

DECISION & ORDER

The Assessor of the Village of
Bronxville, New York, the Board of
Assessment Review of the Village of
Bronxville, New York and the Village
of Bronxville, New York,

Respondents,

For Review of the Assessment of Certain
Real Property in the Village of
Bronxville, New York.

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10 PARK PLACE : RECENT SALE AS BEST EVIDENCE OF VALUE

This Real Property Tax Law [" RPTL "] Article 7 proceeding
involves a challenge to the 2006 assessment imposed by the
Respondents, the Village of Bronxville [" the Village "], its
Assessor and its Board of Assessment Review [" BAR "], on real
property, owned by the Petitioner, JB Park Place Realty LLC

[" JB "], located at 10-12 Park Place, Bronxville, New York and identified on the Official Tax Map of the Town of Eastchester and the Village as Section 4, Block 2, Lot 18B¹. The subject property was purchased on March 16, 2005² for \$1,325,000 by JB from Bremen House, Inc. [" Bremen "] pursuant to a Contract of Sale and Riders [" the Contract of Sale "] dated December 2004³ after an appraisal dated January 5, 2005 was " completed indicating a market value of \$1,340,000 "⁴.

The Summary Judgment Motion

Presently before this Court is JB's Motion for Summary Judgment pursuant to CPLR 3212 seeking an Order " that the arm's length sale of the (subject) property is the best evidence of value and the assessment for 2006 should be reduced to reflect the sale price multiplied by the applicable Equalization Rate "⁵. After a careful review of JB's Notice of Motion and supporting papers including the Affirmation of William E. Sulzer⁶, the Affidavit of Joseph A. Barone, Jr.⁷, the Reply Affirmation of William E. Sulzer⁸, the Affidavit of George Groves⁹ and the Reply Affidavit of Joseph A. Barone, Jr.¹⁰ and the Village's opposition thereto including the Affirmation In Opposition of Ruth F-L. Post¹¹ and the Affidavit In Opposition of Gerry Iagallo¹², the Court is now prepared to render its Decision.

Factual Background

The subject property, described in a Contract of Sale¹³, an appraisal prepared for Independent Community Bank [" the Bank "]¹⁴, a Bargain and Sale Deed¹⁵, an RP-5217 Real Property Transfer Report¹⁶ and a New York State Office of Real Property Services [" ORPS "] SalesWeb description¹⁷, consists of a " One-story commercial building containing 6,823 square feet "¹⁸ occupying " a midblock site on Park Place between Kraft Avenue and Pondfield Road in the Village of Bronxville, Westchester County, New York. The subject is roughly rectangular in configuration...with 52.3 feet of frontage on the north side of Park Place and a depth of 140 feet "¹⁹.

The Broker RE/MAX Prime Properties Is Retained

Evidently, in the fall of 2004 the seller, Bremen, whose principal is Berrin Tekiner [" an astute Real Estate investor being a principal in several Manhattan commercial properties, and owns real estate in Connecticut, Texas, Cannes, France and Istanbul, Turkey "²⁰], listed the subject property with the broker RE/MAX Prime Properties of 696 White Plains Road, Scarsdale, New York [" RE/MAX "], the owner of which is the real estate broker George Groves [" Groves "] who has " been in the real estate

industry for thirty-seven years since being licensed in 1969 " and is a " former President of the Westchester [C]ounty Board of Realtors and a former Westchester County Tax Commissioner"²¹. According to Groves the listing of the subject property was " open " and RE/MAX " did not have an exclusive right to sell " it²². After accepting the listing Groves contacted JB and advised that the subject property was for sale²³. The negotiations between buyer and seller were " back and forth "," took several months to conclude ", the seller being " under no duress to sell the property " and " both parties seemed typically motivated ", " well-informed and knowledgeable and (acting) in their own self interests throughout the transaction "²⁴. The buyer and seller agreed upon a purchase price for the subject property of \$1,325,000 which according to Groves " was the result of an arm's length transaction ", was " mutually acceptable to both parties " and " was commensurate with the market based on (his) experience "²⁵.

An Arm's Length Transaction

According to Joseph A. Barone, Jr. [" Barone "], the owner of the buyer JB, " The subject property was purchased in a competitive and open market under all conditions requisite to a fair sale. I had no relationship with the Seller nor do I presently have any relationship to the Seller. My first meeting with the Seller was at the closing "²⁶. " The sale price of \$1,325,000 was

not affected by undue stimulus or outside influences but rather from extensive and free negotiations between (himself) and the Seller, through her Broker from Re/Max Prime Properties "27. In addition, " There was no unusual or ' sweetheart financing ' for his transaction...no Seller concessions nor were there any special financing concessions granted by anyone associated with the sale "28. And the seller was paid in " U.S. dollars "29.

Improvements Made & Restaurant Lease

After purchasing the subject property JB made improvements consisting of repairing the sprinkler system and plumbing at a cost of \$10,600 and excavating and repairing the sidewalk at a cost of \$4,455 for a total cost of \$15,055³⁰. Evidently, a portion of the subject property was vacant and JB " signed a lease for the vacant space contingent upon the lessee obtaining approval from (the Village) to use the space as a restaurant. On February 8, 2006 the Village Planning Board approved such use. On the January 1, 2006 taxable status date related to this proceeding, the Planning Board approval had not been granted "31.

The RP-5217 Real Property Transfer Report

The seller and buyer filed an RP-5217 Real Property Transfer Report³² [" RP-5217 "] with ORPS describing the transaction and certifying " that all of the items of information entered on this form are true and current "³³.

The ORPS SalesWeb

ORPS reviewed the RP-5217 and issued a report on its SalesWeb site³⁴ describing the sale of the subject property as " Arm's Length : Yes "³⁵.

The Village's Agreement To Reduce Its Assessment

In June of 2005 the Village's Assessor, Robert Balog, " through counsel entered into a written agreement with (counsel for JB) to reduce the subject property's 2006 assessment to reflect market value "³⁶. The Assessor " agreed to reduce the 2006 assessment to ` no greater than 49,425...As consideration for this agreement (JB) agreed not to challenge the 2006 assessment "³⁷.

The Town Of Eastchester Reduces Its Assessment

In 2005 the Town of Eastchester " agreed to reduce (its) assessment of the subject property from 49,700 to 22,950 (which) reflected a fair market value of \$1,326,590 based on the available 2004 equalized value "³⁸.

The Village Refuses To Honor Its Agreement

After the Village's Assessor, Robert Balog, resigned in 2005, his replacement, Genaro Iagallo [the Village's " Assessing Consultant "³⁹] refused to honor the Village's agreement with JB to reduce the 2006 assessment on the subject property to \$49,425.

The Proceeding Before The Village's BAR

As a result JB filed a grievance in 2006 before the Village's BAR. During the BAR hearing JB's counsel testified and produced all requested documentation relating to the sale of the subject property including " a completed copy of the Property Appearance/Questionnaire Form they requested, the 2005 Income and Expense Statements, A Real Property Transfer Report, the Contract of Sale with Rider, a Lease, an Appraisal which also set forth the rent roll and comparable rental data, the Consent Judgment evidencing the Court's approval of the assessment reduction agreed to with the Town of Eastchester and the Letter Agreement between

the former Village of Bronxville Assessor and (JB) agreeing to an assessment of ` no greater than \$49,425 `...I was available to answer any and all questions regarding the sale but the (BAR) did not assert any abnormality or challenge the validity of the subject sale ⁴⁰. In March of 2006 the BAR reduced the assessment " for the subject property from 112,000 to 72,000, rather than to \$49,425 as agreed upon ⁴¹.

Ongoing Negotiations

JB's counsel and the Village's Assessing Consultant, Mr. Iagallo, " engaged in extensive negotiations...regarding reducing the 2006 assessment to the amount previously agreed upon by his predecessor. At no time was it suggested by (Mr. Iagallo) that the transaction was not arm's length nor was any additional documentation requested regarding the validity of the sale during the course of negotiations ⁴².

The Challenged Assessment & Applicable Equalization Rate

JB asserts that the Village's 2006 assessment of \$72,000 " reflects an inaccurate market value of \$2,099,125 as opposed to the fair market value demonstrated through the purchase price of \$1,325,000 ⁴³. JB also asserts that the applicable equalization

rate for 2006 is 3.43% relying upon an ORPS " Village of Bronxville Equalization Rate History " ⁴⁴.

The Requested Reduction

JB asserts that it should receive a reduction in assessment of \$26,552 [\$72,000 reduced to \$45,448 (\$1,325,000 x 3.43%)], a tax refund together with interest pursuant to R.P.T.L. § 726(2) citing Teja v. Assessor of the Town of Greenburgh, West. Co. Index No. 14628/03 (May 24, 2004) [Rosato, J.] [" judgment is to be awarded to petitioners reducing the assessments for 2003 and 2002 in accordance herewith and providing, *inter alia*, for the refunding of all excess taxes paid, with appropriate interest "] ⁴⁵.

The Village's Request For Discovery

In an effort, perhaps, to catch some admissible evidence to defeat JB's summary judgment motion the Respondents demand an opportunity to conduct discovery citing CPLR § 3212(f) [" Respondents' Tax Assessor Consultant...has not had an opportunity to conduct discovery and determine whether the purchase price established in 2004 reflects the appropriate valuation of the property for the 2006 assessment. Discovery in this matter must be

conducted so that Mr. Iagallo can review the specific details of the sale of the subject property "46]].

DISCUSSION

Amongst the recognized valuation methods "[t]he best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy "...However, where such evidence is lacking, courts have appropriately valued property by utilizing the comparable sales method, the capitalization of income method or the reproduction cost less depreciation method " [Matter of FMC Corporation v. Unmack, 92 N.Y. 2d 179, 189, 677 N.Y.S. 2d 269 (1998); See also Orange And Rockland Utilities, Inc. v. Assessor of the Town of Haverstraw, 12 Misc. 3d 1194 (Rockland Sup. 2006) for a discussion of all four methods of valuation)]. The rule has evolved and is now well settled " that the purchase price set in the course of an arm's length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the ' highest rank ' to determine the true value of the property at that time " [Plaza Hotel Associates v. Wellington Associates, Inc., 37 N.Y. 2d 273, 277, 372 N.Y.S. 2d 35 (1975); see also: Matter of Allied Corp. v. Town of Camillus, 80 N.Y. 2d 351, 356, 590 N.Y.S. 2d 417 (1992) (" The best evidence of value, of course, is a

recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy "); Matter of F.W. Woolworth Co. v. Tax Commissioner of the City of New York, 20 N.Y. 2d 561, 565, 285 N.Y.S. 2d 604 (1967)(" It cannot be said that, by placing strong emphasis on the 1954 sale, the Appellate Division erred as a matter of law "); Matter of Lane Bryant v. Tax Commissioner of City of N.Y., 21 A.D. 2d 669, 249 N.Y.S. 2d 994 (1st Dept. 1964)(" the actual sale at arm's length is new evidence of the highest rank, if unexplained, to determine the true value of the property at such time "), aff'd 19 N.Y. 2d 715, 279 N.Y.S. 2d 175 (1967); Matter of Reckson Operating Partnership, L.P. v. Assessor of Town of Greenburgh, 289 A.D. 2d 248, 734 N.Y.S. 2d 478 (2d Dept. 2001)(" The Supreme Court properly granted the respondents' motion for summary judgment, since they established that the recent sale price of the property was the best evidence of value of the property "); Matter of Robert Lovett v. Assessor of Town of Islip, 298 A.D. 2d 521, 748 N.Y.S. 2d 517 (2d Dept. 2002)(" The Supreme Court correctly determined that the 1994 sale price of the subject property was the best evidence of its value "); Matter of 325 Highland LLC v. Assessor of the City of Mount Vernon, 5 Misc. 3d 1018(West. Sup. 2004)(" It is well settled that ' the purchase price set in the course of an arm's length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the ' "

highest rank ` to determine the true value of the property at that time ` ")].

The Indicia Of An Arm's Length Transaction

The statements of Barone, the owner of JB, and Groves, the broker-owner of RE/MAX describing the transactions between the seller, Bremen, the broker, RE/MAX, and the buyer, JB, together with the Contract of Sale, the Bank's appraisal, the Bargain and Sale Deed, the RP-5217 filed with New York State and the ORPS SalesWeb document, all demonstrate that the subject sale was an arm's length transaction and no credible or admissible evidence has been introduced by the Respondents to demonstrate otherwise. The credible indicia of the arm's length transaction herein, include, but are not limited to, (1) the seller and buyer are astute, sophisticated investors in real property under no duress to sell or buy the subject property, (2) the real estate broker is also astute and knowledgeable having been in the real estate industry [and licensed] for thirty-seven years and having served as President of the Westchester County Board of Realtors and as a Tax Commissioner, (3) the seller retained the services of the broker to market and sell the subject property, (4) all negotiations between the seller and the buyer were conducted through the broker, (5) the buyer had no relationship whatever with the seller and first met the seller

at the closing, (6) the buyer's financing through the Bank was unrelated to the seller and based upon an appraisal valuing the subject property at \$1,340,000, (7) the terms of the sale were heavily negotiated and after several months the buyer made an offer of \$1,325,000, (8) after this lengthy process the seller agreed to sell and the buyer agreed to buy the subject property for \$1,325,000 and a Contract of Sale was entered into, (9) the seller, the broker and the buyer appear to be sophisticated financially secure business entities and/or persons with extensive experience in marketing, brokering, selling and buying real estate, (10) the admission of the Respondents that " based on the sales price and the appraisal of this property (the 2006 tentative assessment should be) no greater than 49,425 "⁴⁷, (11) the Town of Eastchester's agreement to reduce the 2006 assessment from \$49,700 to \$22,950⁴⁸ and (12) the failure of the Village during the BAR hearing of JB's grievance [or during subsequent negotiations⁴⁹] regarding the 2006 assessment to raise any issue as to " any abnormality (of the subject transaction) or challenge the validity of the subject sale "⁵⁰ [See e.g., W.T. Grant Company v. Scrogi, 52 N.Y. 2d 496, 511, 438 N.Y.S. 2d 761 (1981) (" The general rule as to such sales is ' that the purchase price set in the course of an arm's length transaction of recent vintage...The Appellate Division correctly concluded that the 1974 sale...fit within this general rule...When finally sold, negotiations took

place...At the time of the sale Mr. Guth was financially secure and his business was doing moderately well...Mr. Guth had no interest in or connection with the purchaser...Under the circumstances, the sales price established in this arm's length transaction⁵¹ was the best evidence of the value..."); Matter of Zappala v. Hann, 198 A.D. 2d 879, 880, 604 N.Y.S. 2d 443 (4th Dept. 1993)(" Supreme Court's determination that the 1987 sale of the subject property for the sum of...was an arm's length transaction is amply supported by the record "); Mirant New York, Inc. v. Town of Stony Point Assessor, 13 Misc. 3d 1204 (Rockland Sup. 2006)(" the Petitioners' purchase in July of 1999 of Bowline [\$193,800,000] and Lovett [\$213,580,000] occurred within the context of arm's length transactions and is the best evidence of value for tax year 2000 "); The Appraisal of Real Estate, The Appraisal Institute, 12th Edition (2001), pp. 24⁵², 150 (" arm's length transaction: A transaction between unrelated parties under no duress ")].

What Are Not Arm's Length Transactions

Some transactions are, clearly, not arm's length as discussed by the Court in Application of Putnam Theatrical Corp., 16 A.D. 2d 413, 416, 228 N.Y.S. 2d 93 (4th Dept. 1962)(" The weight which the court should give to the sale by Mosbacher back to the corporation in 1956 is to be determined in the light of

the facts and circumstances of the transaction. There is nothing in the evidence to explain who Mr. and Mrs. Mosbacher were, what their relationship was to the corporation, or in what manner the sale of the property to them was brought about...(The Mosbachers) resided in New York City and...there was no broker in the transaction. Why a resident of New York City would buy a theater and office building in Syracuse at a price of \$1,650,000 under the terms of the agreement, needs explanation. They paid for the property with \$500,000 cash and a 3% \$1,150,000 bond and mortgage to Loew upon which they would not be personally liable. Loew remained in possession of all the property under the lease back, operated it and paid all expenses of the operation...The object of the deal was not to raise money...The purpose was not to unload the property. Loew continued in possession. The purpose was not to satisfy any desire of Mosbacher to enter the theater business...The only inference that can be drawn from the facts is that it was only a paper deal to obtain tax benefits...The evidence before the Court did not justify its determination that this was an arm's length transaction ").

Petitioner Has Met Its Burden Of Proof

In moving for summary judgment the Petitioner " bears the initial burden of presenting evidence, in competent form, establishing entitlement to judgement as a matter of law, and tendering sufficient evidence to eliminate any material issues of fact from the case " [Way v. George Grantling Chemung Contracting Corp., 289 A.D.2d 790, 793, 736 N.Y.S.2d 424 (1st Dept. 2001); See also: Celardo v. Bell, 222 A.D.2d 547, 635 N.Y.S.2d 85 (2d Dept., 1995)(" It is axiomatic that summary judgement is a drastic remedy which should only be granted if it is clear that no material issues of fact have been presented. Issue finding, rather than issue determination, is the court's function (*Sillman v Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957). If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgement should be denied (*Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 A.D.2d 572 (1989)...")].

Discovery Is Not Justified Nor Properly Sought

The Respondent's request for discovery⁵³ is denied for the following reasons. First, the Respondents seem unfamiliar with proper procedure in tax certiorari matters. A request for discovery can only be granted by way of a proper motion pursuant

to CPLR § 408 [See e.g., In re Application of Rockland County Sewer District No. 1, 13 Misc. 3d 1226 (Rockland Sup. 2006) (discussion of discovery in eminent domain and tax certiorari proceedings)]. Second, the Respondents have not presented any credible evidence which even suggests that the subject transaction was not arm's length [See e.g., Gateway State Bank v. Shangri-La Private Club, 113 A.D. 2d 791, 792, 493 N.Y.S. 2d 226 (2d Dept. 1985)(" To speculate that something might be caught on a fishing expedition provides no basis pursuant to CPLR 3212(F) to postpone decision on the summary judgment motion ")]. Third, Respondents had access to all relevant documentation and testimony regarding the subject sale during the BAR hearing [and during subsequent negotiations] and never once challenged the subject sale as abnormal or anything but arm's length.

The Motion For Summary Judgment Should Be Granted

This Court finds the Petitioner has met its burden of showing entitlement to judgement as a matter of law. This Court also finds that there are no material issues of fact to preclude summary judgement. Based upon the foregoing the Petitioner's motion for summary judgment is granted.

The Calculations

Applying the Village's 2006 equalization rate of 3.43% to the sale price of the subject property of \$1,325,000 produces an indicated assessed value of \$45,448 for 2006. The assessment roll is to be corrected accordingly and any overpayment of taxes is to be refunded with interest.

The foregoing constitutes the Order and Decision of this Court.

Dated: November 8, 2006
White Plains, N.Y.

HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

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ENDNOTES

1. Affirmation of William E. Sulzer dated August 3, 2006 [" Sulzer Aff. "] at Ex. A (Notice Of Application For Review Of Tax Assessments).
2. Sulzer Aff. at para. 7, Ex. D (Bargain and Sale Deed dated March 16, 2005), Ex. E (RP-5217).
3. Sulzer Aff. at Ex. B.
4. Sulzer Aff. at para. 6 and Ex. C.
5. Notice of Motion dated August 3, 2006 [" the Motion "].
6. Sulzer Aff.
7. Affidavit of Joseph A. Barone, Jr. sworn to July 31, 2006 [" Barone Aff. "].
8. Reply Affirmation of William E. Sulzer dated September 29, 2006 [" Sulzer Reply Aff. "].
9. Affidavit of George Groves sworn to September 29, 2006 [" Groves Aff. "].
10. Reply Affidavit of Joseph A. Barone, Jr. sworn to September 28, 2006 [" Barone Reply Aff. "].
11. Affirmation In Opposition of Ruth F-L. Post dated September 12, 2006 [" Post Aff. "].
12. Affidavit In Opposition of Gerry Iagallo sworn to September 12, 2006 [" Iagallo Aff. "].
13. Sulzer Aff. at Ex. B.
14. Sulzer Aff. at Ex. C.
15. Sulzer Aff. at Ex. D.
16. Sulzer Aff. at Ex. E.
17. Sulzer Aff. at Ex. G.
18. Sulzer Aff. at Ex. C (Summary).
19. Sulzer Aff. at Ex. C at p. 12.

20. Groves Aff. at para. 7.
21. Groves Aff. at para. 1.
22. Groves Aff. at para. 3.
23. Groves Aff. at para. 4.
24. Groves Aff. at paras. 5-6.
25. Groves Aff. at paras. 5 & 7.
26. Barone Reply Aff. at para. 1.
27. Barone Reply Aff. at para. 3. See also Barone Aff. at paras. 2 & 3.
28. Barone Reply Aff. at para. 4 (" I obtained commercial financing to purchase the Subject property through Independence Community Bank, 195 Montague Street, Brooklyn, New York, 11201, loan #4000224...I paid approximately 15% cash and financed the balance via a 15 year self-liquidating commercial loan at 6% interest. A representative of the Bank inspected the Subject Property and the Bank obtained an independent appraisal in January 2005 [Sulzer Aff. at Ex. C] ").
29. Barone Reply Aff. at para. 5.
30. Barone Aff. at para. 4; See also Sulzer Aff. at para. 12 (" Petitioner has made minimal maintenance improvements to the property...without reimbursement from any tenant "); Ex. H (" necessary repair of the existing sprinkler system which was in a state of disrepair and inoperable when I purchased the property in March of 2005 ").
31. Sulzer Aff. at para. 13.
32. Sulzer Aff. at para. 9.
33. Sulzer Aff. at Ex. E.
34. For a discussion of the ORPS SalesWeb site and its evidentiary significance see [Miriam Osborn Memorial Home Association v. Assessor of the City of Rye](#), 9 Misc. 3d 1019, 800 N.Y.S. 2d 909 (West. Sup. 2005).
35. Sulzer Aff. at para. 11 and Ex. G.

36. Sulzer Aff. at para. 14.

37. Sulzer Aff. at paras. 15-16; Ex. I (" Based on the sales price and the appraisal of this property, it is agreed that no challenge will be made against the 2006 assessment as long as the 2006 tentative assessment on this property is no greater than 49,425. This agreement shall be effective so long as no changes to the property are made, take place or are applied for, other than necessary and normal repairs and/or maintenance ").

38. Sulzer Aff. at para. 17 and Ex. J.

39. Sulzer Aff. at paras. 19-20. See also Iagallo Aff. at para. 1 and Ex. B.

40. Sulzer Reply Aff. at para. 5.

41. Sulzer Aff. at para. 21.

42. Sulzer Reply Aff. at para. 6.

43. Sulzer Aff. at para. 22.

44. Sulzer Aff. at para. 23 and Ex. K.

45. Sulzer Aff. at paras. 24-25, 28.

46. Post Aff. at para. 15; See also Iagallo Aff. at paras. 6-8 (" In analyzing the valuation of a property, especially where reliance is being placed on the price of a recent sale of said property, it is essential that the details of the transaction be known and that possibility of any abnormalities be explored ").

47. Sulzer Aff. at Ex. I. The \$49,425 figure is sufficiently close to JB's proposed assessment figure of \$45,448 [Sulzer Aff. at para. 24 (" The sale price of \$1,325,000 multiplied by the applicable equalization rate would result in an assessment of \$45,448 for 2006 ") to support a conclusion that Respondents never considered the sale of the subject property as not being arm's length.

48. Sulzer Aff. at paras. 17-18 and Ex. J. The agreed to reduced assessment of \$22,950 would reflect a " fair market value of \$1,326,590 based on the available 2004 equalized value " which is sufficiently close to the sale price of \$1,325,000 to support a conclusion that the Town of Eastchester considered the subject transaction to be arm's length.

49. Sulzer Aff. at para. 6.

50. Sulzer Reply Aff. at para. 5.

51. For a discussion of business contracts negotiated at arm's length see Ancona v. Cipriano, 4 Misc. 3d 1004(A) (Nassau Sup. 2004) (" We have also emphasized this rule's special import ' in the context of real property transactions, where commercial certainty is a paramount concern, and where...the instrument was negotiated between sophisticated, counseled business people negotiating at arm's length ").

52. The Appraisal of Real Estate, The Appraisal Institute, 12th Edition (2001), p. 24 (market value is defined as " [t]he most probable price which a specified interest in real property is likely to bring under all of the following conditions:

1. Consummation of a sale occurs as of a specified date.
2. An open and competitive market exists for the property interest appraised.
3. The buyer and seller are each acting prudently and knowledgeably.
4. The price is not affected by undue stimulus.
5. The buyer and seller are typically motivated.
6. Both parties are acting in what they consider their best interest.
7. Marketing efforts were adequate and a reasonable time was allowed for exposure in the open market.
8. Payment was made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. "

53. See Post Aff. at paras. 14-15; Iagallo Aff. at paras. 6-8.