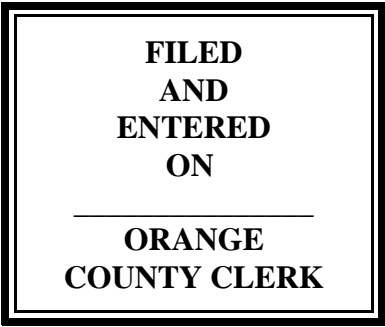


SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE



WILLIAM AND ALICE JOHNSON,

Petitioners,

-against-

EILEEN KELLY, Assessor of the Town of
Goshen,

Index Nos.
5077/99
4254/00
4939/01
5208/02
4678/03
5184/04

DECISION & ORDER

Respondent,

To Review Assessments Made For The Year
1999 Against The Real Property Of
Petitioners In The Town Of Goshen And
Three Other Related Proceedings For The
Years 2000, 2001, 2002, 2003 And 2004.

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DICKERSON, J.

THE PARTIAL APPRAISAL: ONE ACRE SHORT

The Petitioners, the owners in fee simple of an active farm located
in the Town of Goshen, Orange County, New York, challenge the
assessments placed on the subject property by the Respondent [" the

Assessor "] for the years 2002, 2003 and 2004¹. After a trial held on November 30, 2005 and careful consideration of the excellent post trial Memoranda of Law submitted by the parties it is the decision of this Court that the Petitioners' trial appraisal prepared by R. Peters Hubbell, Jr. MAI [" Hubbell Appraisal "] is stricken [See e.g., SKM Enterprises, Inc. v. Town of Monroe, 2 Misc. 3d 1004, 784 N.Y.S. 2d 924 (Orange Sup. 2004) (petitioner's recycled trial appraisal stricken; RPTL Article 7 petition dismissed)] for failing to comply with 22 NYCRR §§ 202.59(g)(2),(h) and failing to value the total assessment² as required by Real Property Tax Law [" RPTL "] § 502(3) [See e.g., Matter of Schubert Organization, Inc. v. Tax Commission of the City of New York, 60 N.Y.2d 93, 468 N.Y.S.2d 594 (1983); Matter of Dale Joan Young v. The Town of Bedford, 9 Misc. 3d 1107(A), 808 N.Y.S. 2d 921 (West. Sup. 2005); C.H.O.B. Associates, Inc. v. The Board of Assessors of the County of Nassau, 45 Misc. 2d 184, 257 N.Y.S. 2d 31 (Nassau Sup. 1964)] and as a consequence the Petitioners' RPTL Article 7 petitions for the tax years 2002, 2003 and 2004 are dismissed.

Factual Background

The subject property is described on the Town of Goshen tax roll as tax map parcel Section 20, Block 1, lot 18. The property consists of 60 acres of land with frontage of 1,410 square feet on the southeast side of Durland Road, with 1,670 square feet of frontage on the

southwest side of Route 17A, with an additional access provided by the cul-de-sac located at Orchard Hill Vista³. The improvements consist of a single family, detached wood frame, two-story residence containing 1,882 square feet of living space and a wood frame barn⁴.

The Johnson Farming Operation

The subject property is part of a larger farming operation [" the Johnson Farm "] and the Petitioners' home farm is located on Fort Hill Road in the Town of Goshen where a large free-stall dairy is located. The subject property is one of the out lying parcels that make up the Johnson Farm and the subject property is used for crop production⁵.

Agricultural Exemption

The assessment for each year under review, 2002, 2003 and 2004, was \$174,500 for the land and \$89,500 for the buildings, for a total assessment of \$264,000⁶. During the years under review, the subject property was granted an agricultural exemption for the 2002 tax roll in the sum of \$159,159, for the 2003 tax roll in the sum of \$159,155, and for the 2004 tax roll in the sum of \$119,416⁷.

The 2002 Assessment

For the 2002 tax year, the Petitioners filed a Complaint with the Town Board of Assessment Review stating that the assessment of \$264,000 was excessive, and requesting that the assessment of \$264,000 be reduced to \$64,600⁸. The Petitioners stated in the 2002 Complaint⁹ that the subject property was last appraised in February 2001, the building value was \$55,500, the land was valued at \$9,100, for a total appraised value of \$64,600. The 2002 Petition states that the assessment of the subject property in the amount of \$264,000 is erroneous by reason of overvaluation. The Petition states that the said property " is assessed at the sum of \$264,000 and the said property is actually of the true value of not more than \$64,600. The extent of such overvaluation is \$199,400 "¹⁰.

The 2003 Assessment

For the 2003 proceeding, the Petitioners filed a Complaint¹¹ with the Town Board of Assessment Review stating that the assessment of \$264,000 was excessive and requesting that it be reduced to \$9,700. The Petitioners' 2003 Complaint¹² also states that there was a recent appraisal of the subject property in 2001, and that the appraisal value of the farm land was \$9,700. This complaint does not give a value for the buildings on the property. The 2003 Petition¹³ states that the

assessment of the subject property in the amount of \$264,000, of which \$174,500 represents the land value, is erroneous in that it is overvalued by \$164,800 since " the said property is actually of the true land value of not more than \$9,700 ".

The 2004 Assessment

In 2004, the Petitioners filed a Complaint¹⁴ with the Town Board of Assessment Review alleging that the assessment of \$264,000 was excessive, and requesting that it be reduced to \$64,000. The Petitioners' 2004 Complaint¹⁵ states that the property was last appraised in February 2001, the appraised value for the buildings/improvements is \$55,000, for the land is \$9,100, with a total appraised valued of \$64,600. The 2004 Petition¹⁶ states that the assessment of \$264,000, of which \$174,500 represents the land value, is erroneous in that it is overvalued by \$164,800 since " the said property is actually of the true land value of not more than \$9,700 ".

The Hubbell Appraisal - Hypothetical Conditions

In valuing the subject property for trial purposes, the Petitioners' appraiser, R. Peters Hubbell, Jr. " applied the Direct Sales Comparison and Income Approaches to arrive at a value indication exclusively for use as income producing farmland...the buildings

currently on the subject are ignored in this analysis and this constitutes a Limited Appraisal "¹⁷. In his Appraisal, Mr. Hubbell stated that " This appraisal report and the values herein are subject to the following hypothetical conditions: Per client request, the existing buildings; a single-family detached wood frame two-story residence with 1,882 square feet of living area and a wood frame barn and the one acre prime site are ignored in this analysis. The purpose of the appraisals are to value the property as vacant unimproved active farmland based on the hypothetical condition that the improvements do not exist and that the land is reserved for farm use only "¹⁸.

The Presumption of Validity

A party seeking to overturn an assessment must first overcome the presumption of validity of the assessment through the submission of substantial evidence [See e.g., Matter of FMC Corp. (Peroxygen Chems. Div.) v. Unmack, 92 N.Y.2d 179, 187, 677 N.Y.S.2d 269 (1998) (" In the context of tax assessment cases, the 'substantial evidence' standard merely requires that petitioner demonstrate the existence of a valid and credible dispute regarding valuation. The ultimate strength, credibility and persuasiveness are not germane during this threshold inquiry...a court should simply determine whether the documentary and testimonial evidence proffered by petitioner is based on 'sound theory and objective data' "); Matter of Niagara Mohawk Power Corp. v. Assessor of the Town

of Geddes, 92 N.Y.2d 192, 196, 677 N.Y.S.2d 275 (1998) (" In the context of a proceeding to challenge a tax assessment, substantial evidence proof requires a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser ")].

Real Property Tax Law § 502(3)

Pursuant to Real Property Tax Law 502(3), "...Only the total assessment, however, shall be subject to judicial review provided by article seven of this chapter." [See e.g., Matter of Schubert Organization, Inc. v. Tax Commission of the City of New York, 60 N.Y.2d 93, 96, 468 N.Y.S.2d 594 (1983)(" In the process of the review of the total assessments the courts are authorized and may be expected to make separate factual determinations as to the value properly to be assigned to the land and the value properly to be assigned to the building... Within the figure for total assessment, however, the components of value for land and improvement may be freely adjusted as warranted by the evidence. FN*...in 1911, the Legislature amended section 21-a of the Tax Law (now Real Property Tax Law, 502, sub.3) to provide that ' [t]he total assessment only can be reviewed ' (L.1911, ch. 117)...the amendment has been held to prohibit review of either the land or the building assessment separately ".); C.H.O.B. Associates Inc. v. The Board of Assessors of the County of Nassau, 45 Misc.2d 184, 193, 257

N.Y.S.2d 31 (Nassau Sup. 1964)(" A declaration of illegality such as the plaintiff seeks here demands a much firmer base than the fiction that land in an improved parcel has a market value distinct and separate from the improvements thereon. By providing that it was only the total assessment which could be judicially reviewed (Section 502(3), Real Property Tax Law), the Legislature apparently recognized the fiction underlying these requirements, and that an improved parcel's actual value relates to the whole and not to the separate ingredients of land and improvements. Any separation of value for land and buildings is purely artificial and hypothetical ")].

The Respondent's Position

Regarding RPTL § 502(3), it is the Respondent's position that Mr. Hubbell did " not include in his appraisal any analysis or value for the improvements or the improved acre of land upon which the improvements are alleged to be located...Since the petitioners are not contesting the entire assessment, the Court must dismiss these proceedings...The Court must limit judicial review only to the total value of the assessment under review " ¹⁹.

Failure To Satisfy Burden Of Proof

As to the issue of burden of proof, the Respondent claims that " having only filed an appraisal concerning only a portion of the assessment...the petitioners have failed to satisfy their burden of proof in rebutting the presumption that the assessment is valid " ²⁰

Petitioners' Position

With respect to RPTL § 502(3), the Petitioners claim that in the "'grievances' [RPTL § 524 complaints] and his actual Petitions in these combined matters [R. Exs. B-G] Johnson has never objected to that part of the assessment that is attributable to the improvements on the farm, i.e. the farm house, the barn and the sheds. Johnson's counsel's early letter to the Assessor's counsel²¹ reflects that position. That Johnson has never objected in the pre-petition complaint segment of these proceedings or in the Article 7 petitions themselves amounts to a conscious acceptance of the improvement value assigned by the Assessor and that acceptance should bind the Assessor at this point and the court in this proceeding "²².

Assessments On Improvements Not Challenged

Petitioners, relying Sterling Estates, Inc. v. Board of Assessors of the County of Nassau, 66 N.Y.2d 122, 128, 495 N.Y.S.2d 328 (1985), contend that " Johnson has agreed to and accepted the assessment assigned to the improvements and that acceptance should bind the Assessor in this proceeding...the approach taken by Johnson and his expert appraiser is valid and lawful. Only the land value is in contention here - nothing else. The Petitioner should be allowed to approach its estimate of value on that basis "²³.

Initial Presumption Rebutted

Regarding the burden of proof issue, the presumption of the validity of the assessment, and the standard set forth by the Court in Matter of FMC Corp. (Peroxygen Chems. Div.) v. Unmack, 92 N.Y.2d 179, 187, 677 N.Y.S.2d 269 (1998), the Petitioners contend that " [a]pplying the rule here it cannot be said otherwise than that Johnson has completely rebutted the initial presumption in favor of the Assessor and, accordingly, it has 'disappeared' "²⁴.

DISCUSSION

The subject property consists of 1 acre of improved property, the various improvements on that 1 acre of improved property, as well as 59 acres of active farm land. Yet, there is no value given in the testimony or in the Petitioners' appraisal regarding how much the single improved acre and its improvements should be valued. The Petitioners advised their appraiser that only the assessed value of the farm land as vacant, excluding the house and other improvements, is being contested in these proceedings. However, the yearly total assessment of \$264,000 includes the residence, buildings, and other improvements as well as the land. The appraiser is required to appraise the entire tax map parcel and arrive at a value for all of the inventory items contained therein. Taxes are paid on the total taxable assessment and not on a portion thereof. The Court cannot, based upon the record before it, determine the value of this total assessment as required by RPTL § 502(3), since no value has been determined for all of the component parts.

Petitioners' Position Incomprehensible

This Court cannot understand why the Petitioners have filed an appraisal concerning only a portion of the assessment, since they have filed petitions pursuant to RPTL Article 7 calling into review the total assessment, including the components that make up the total assessment.

Having failed to file an appraisal that reviews the entire tax map parcel and the total assessment in question, they have not satisfied their burden of proof of rebutting the presumption that the total assessment is valid.

No Stipulation To A Partial Assessment

Further, there is no mention in the pleadings or in the trial record that the Petitioners requested that the Town stipulate to a portion of the assessment and that the Court would only be requested to value the 59 unimproved acre portion of the 60 acre farm. Neither the " Complaint for Real Property Assessment " filed by the Petitioners for 2002, 2003 and 2004, nor the " Petition for Review of Assessment " also filed by the Petitioners for the years at issue, set forth any indication that the Petitioners were not challenging the improved 1 acre of the subject property.

Only The Total Assessment Is The Proper Subject Of Judicial Review

The law is clear, pursuant to RPTL § 502(3), that only the total assessment is subject to judicial review. No evidence has been presented by the Petitioners which would permit the Court to disregard RPTL § 502(3) and the Court of Appeals holding in Matter of Schubert Organization, Inc. v. Tax Commission of the City of New York , 60 N.Y.2d

93, 96, 468 N.Y.S.2d 594 (1983) that it review only the total assessment [See also Dale Joan Young v. Town of Bedford 9 Misc. 3d 1107(A), 808 N.Y.S.2d 921 (2005)("... it is inappropriate within the context of the instant proceeding to selectively challenge the assessment of only one of the component parts... of the total assessment of \$217,800. R.P.T.L. § 502(3) states, in part, " The assessment roll...shall provide for the entry with respect to each separately assessed parcel of the assessed valuation of the land exclusive of any improvement, the total assessed valuation, and the full value of the parcel...Only the total assessment, however, shall be subject to judicial review provided by article seven of this chapter " [R.P.T.L. § 502(3)(McKinney's 2000)]...The Petitioner's challenge of only the improvements component of subject property's 2004 assessment must be rejected as a matter of law ")].

The Petitioners' reliance on Sterling Estates, Inc. v. Board of Assessors of the County of Nassau, 66 N.Y.2d 122, 495 N.Y.S.2d 328 (1985), is misplaced, since there is no indication in the instant matter that the Petitioners implicitly acknowledged the propriety of the assessments regarding the improvements to the subject property. The Sterling case does not change the requirement that the Petitioners have the burden of proof as to the total assessment and are required to submit an appraisal that addresses the total assessment and each of the component parts.

Accordingly, the Petitioners' Trial Appraisal is stricken and their RPTL Article 7 Petitions for the years 2002, 2003 and 2004 are dismissed.

The Constitutes the Decision and Order of this Court.

Dated: April 17, 2006
White Plains, N.Y.

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ENDNOTES

1. Trial Record [" Tr. Rec. "] at p. 2 (" The Court:...I just want to confirm, the petitioner, that they will not be proceeding on the years 1999, 2000, 2001; is that correct?. Mr. Sweeney: That's correct ").
2. Respondent's Reply Memorandum of Law [" R. Reply Memo. "] at Point II (" The appraiser...does not give an opinion of what the subject's homestead site should be valued at. There is no value given in the testimony or in the appraisal as to how much this improved acre [of 60 acres] should be valued at. The court cannot based upon the record before it determine how much the total assessment should be as is required by RPTL § 502(3) since no value has been determined for all of the component parts ").
3. Trial appraisal prepared by R. Peters Hubbell, Jr. MAI [" Hubbell App. "] at p. 7.
4. Hubbell App. at pp. 5, 7.
5. Tr. Rec. at p. 17.
6. Hubbell App. at p. 7.
7. Hubbell App. at pp. 19-20.
8. Respondent's Trial Exhibit [" R. Ex. "] B at p. 3.
9. R. Ex. B at p. 2, para. 3.
10. R. Ex. E at para. 6.
11. R. Ex. C.
12. R. Ex. C at p. 2, para. 3.
13. R. Ex. F at para. 6.
14. R. Ex. D.
15. R. Ex. D at p. 2, para. 3.
16. R. Ex. G at para. 6.

17. Hubbell App. at p. 6.
18. Hubbell App. at p. 5.
19. Respondents' Post-Trial Memorandum Of Law [" R. Memo. "] at p. 16.
20. R. Memo. at p. 17.
21. Petitioners' Trial Exhibit [" P. Ex. "] 2.
22. Petitioner's Post Trial Brief [" P. Memo. "] at p. 7.
23. P. Memo. at p. 7.
24. P. Memo. at p. 19.