

**Matter of Holcomb v Town of Richford**

2012 NY Slip Op 33130(U)

December 13, 2012

Sup Ct, Tioga County

Docket Number: 40823

Judge: Jeffrey A. Tait

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At a Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Tioga County Courthouse, in the Village of Owego, New York on the 16th day of October 2012

PRESENT: HONORABLE JEFFREY A. TAIT  
JUSTICE PRESIDING

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF OWEGO

**In the Matter of the Application for a Review under Article 7 of the Real Property Tax Law of the Tax Assessments by Charlie Holcomb, Roberta Holcomb and Jessica Micha,**

Petitioners,

v.

**Town of Richford, The Assessor of the Town of Richford, Tioga County, New York, and the Board of Assessment Review for the Town of Richford,**

Respondents.

**DECISION AND ORDER**

**Index No. 40823  
RJI No. 2010-0258-M**

**Index No. 42055  
RJI No. 2011-0228-M**

**Index No. 43048  
RJI No. 2012-0229-M**

**APPEARANCES:**

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**HON. JEFFREY A. TAIT, J.S.C.**

The Petitioners Charlie Holcomb, Roberta Holcomb, and Jessica Micha<sup>1</sup> commenced this proceeding under New York Real Property Tax Law Article 7 challenging the assessed value of properties they own in the Town of Richford (Town) and seeking a reduction in the assessment of those properties.

The properties in question are 21 Victory Hill Road (tax map # 7.00-1-20.10), vacant land on Victory Hill Road (tax map # 7.00-1-19.00), and 315 Victory Hill Road (tax map # 7.00-1-11.00). 21 Victory Hill Road and the vacant land on Victory Hill Road are contiguous parcels.<sup>2</sup> 21 Victory Hill Road is owned by Roberta Holcomb and Jessica Micha. 315 Victory Hill Road is owned by Charles Holcomb and Beverly Peppin.

At issue in this proceeding is the tax assessment for these properties for the July 2010, July 2011, and July 2012 assessment rolls.

The parties presented evidence in support of their positions on October 17, 2012. Ms. Micha, Mr. Holcomb, and Ms. Holcomb testified in support of the Petitions. They also presented the testimony of both the Town of Richford Assessor, Fran Butler, and their appraiser, Kenneth G. Frommer. The Respondents presented the testimony of their appraiser, David W. Briggs. The appraisers testified concerning the value of the properties as of July 2009 and 2010.

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Ms. Micha is Mr. Holcomb's sister.

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To a traveler on Victory Hill Road, they could appear to be a single parcel of land.

### **The Law**

Very recently, the Appellate Division of the Third Department clearly stated “it is well settled ‘[t]he best evidence of value . . . is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy’” (*In the Matter of Rite Aid Corp. v. Susan Otis as Assessor of the Town of Malta et. al.*, \_\_ AD3d \_\_, 2012 NY Slip Op 07942 [3d Dept, Nov. 21, 2012], citing *Matter of Allied Corp. v. Town of Camillus*, 80 NY2d 351, 356 [1992]).

Future possibilities or potential are not proper factors in determining the value of property for real estate tax assessment purposes. “Value is determined by assessing the condition of the property according to its state on the taxable status date, without regard to future potentialities or possibilities, and may not be assessed on the basis of some use contemplated in the future” (*Matter of Adirondack Mtn. Reserve v. Board of Assessors of Town of N. Hudson*, 99 AD2d 600, 601 [3d Dept 1984], *affd* 64 NY2d 727 [1984]).

### **21 Victory Hill Road and Victory Hill Road vacant land.**

The 21 Victory Hill Road property consists of 110 acres and is improved with a 2,272 square foot one and three quarter story wood frame house with a partial basement, a two story 4,896 square foot general purpose barn, a second two story 3,360 square foot general purpose barn, a one story 1,440 square foot pole barn, a 555 square foot one story pole shed, a 456 square foot wood frame shed, and a 3,060 square foot open faced machinery pole barn shed. The other Victory Hill Road property consists of vacant unimproved land comprising 63 acres. As noted

above, these two Victory Hill Road properties are two separate tax map parcels<sup>3</sup> that are contiguous.

The Respondents presented separate values for each parcel. The Petitioners Ms. Micha and Ms. Holcomb presented a single value for the two parcels. There was a logical and practical reason for this, as they purchased both properties at the same time from a single seller and they use the properties for the same purpose.

The assessed value of the parcels as shown on the Town's assessment roll is \$275,00.00 for 21 Victory Hill Road (tax map # 7.00-1-20.10) and \$75,200.00 for the vacant land on Victory Hill Road (tax map # 7.00-1-19.00), for a total assessed value of the parcels of \$350,200.00.<sup>4</sup>

The record clearly establishes that Ms. Micha and Ms. Holcomb purchased these two parcels in 2008 for a combined \$275,000.00. The terms of sale are not unusual and do not appear to be particularly noteworthy as having any facet that would indicate the purchase price is other than a fair reflection of value at the time of purchase. Ms. Micha testified that they paid one half of the purchase price in cash<sup>5</sup> and the other by way of a note and mortgage to the seller.

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In other words, they are listed on the Town's tax rolls as two distinct properties.

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This equates to fair market values of \$280,000.00 and \$87,800.00, respectively, according to the Respondents (\$367,800.00 total). In the Petitions, the Petitioners assert that the fair market values of the properties, on which they assert the assessments should be based, are \$220,900.00 and \$50,800.00, respectively (\$271,700.00 total).

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This does not mean actual currency, though it may have been. It is not known if it was. What is meant is that Ms. Micha did not finance this portion of the purchase, but rather paid one half of the purchase price (probably by check).

Ms. Holcomb testified that she now lives at 21 Victory Hill Road and uses both 21 Victory Hill Road (tax map # 7.00-1-20.10) and the vacant land on Victory Hill Road (tax map # 7.00-1-19.00) for farming and growing organic vegetables.

The Town asserts that the fair market value of the two properties is \$280,000.00 for 21 Victory Hill Road and \$87,800.00 for the vacant parcel on Victory Hill Road, for a total fair market value of \$367,800.00 for the two parcels. Accordingly, the Town's fair market valuation is \$92,800.00 more than Ms. Holcomb and Ms. Micha paid for the property in 2008.

As the Courts recognize a recent sale between a buyer under no compulsion to buy and a seller under no compulsion to sell as the best evidence of value, the recent (2008) sale would appear to be the best indicator of fair market value. A review of the record does not reveal any factors which would negate this. The sale of the two properties was, by all accounts, an arm's length transaction. Testimony was that the seller was not under any compulsion to sell. The evidence established that the seller had not listed the property for sale with any brokers.<sup>6</sup>

There was testimony about the best or most appropriate use of the property. However, as noted above, it is the condition of the property on its taxable status date that determines its fair market value. The record is clear that the condition of the property has not changed since 2008.

Under these circumstances, the 2008 sale is the best and most reliable indicator of fair market value. For those reasons, \$275,000.00 is the combined fair market value of 21 Victory

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This could show that the seller did not actively or effectively market the property and could potentially have obtained a better price had he or she done so. On the other hand, it could show that the seller was not particularly anxious to sell and therefore was very willing to hold out for the price he or she wanted without a willingness to compromise or reduce that price.

Hill Road (tax map # 7.00-1-20.10) and the vacant land on Victory Hill Road (tax map # 7.00-1-19.00).

This leaves undetermined how the total assessed value should be allocated between the two properties. The parties shall have sixty (60) days from the date of this Decision and Order to agree upon an allocation of the total assessed valuation between the properties. Should they be unable to do so within that time, a hearing will be scheduled at which the parties shall have the opportunity to present evidence on this issue.

### **315 Victory Hill Road**

315 Victory Hill Road is a 252<sup>7</sup> or 256<sup>8</sup> acre parcel of land improved by a two and a half story wood frame home with a full basement and 1,560 square feet of finished space, a two story general purpose barn with 4,032 square feet of usable space, a one story machine shop/garage with 1,680 square feet of usable space, and a hunting camp with 336 square feet of usable space.<sup>9</sup> According to the 2010 and 2011 assessment rolls of the Town, it has an assessed value of \$352,400.00.<sup>10</sup>

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According to Mr. Frommer.

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According to Mr. Briggs.

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Mr. Briggs also noted that the property also consists of a former milk house and two 12' x 16' sheds. His report indicates these do not add any value to the property. In his Summary of Important Facts and Conclusions, Mr. Frommer stated that the barn is 1,925 square feet and referred to it as dilapidated, and found no contributory value in the hunting camp.

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Which equates to a fair market value of \$375,000.00. In the Petition, Petitioners assert the property has a fair market value of \$281,900.00.

Mr. Holcomb testified that he purchased the property from his mother and step-father in 2003 for nominal consideration, with his mother and stepfather reserving to themselves a life estate in the property. Unlike the other properties, there is no recent or arms length sale to provide a fair market value for the property.

Mr. Frommer<sup>11</sup> testified and submitted an appraisal report that placed the fair market value of the property at \$270,000.00. Mr. Briggs<sup>12</sup> testified and submitted an appraisal report that placed the fair market value at \$375,000.00.<sup>13</sup>

Mr. Frommer's report values the improvements on the property (other than the home) at \$31,400.00, including: \$17,100.00 for the equipment building, \$5,000.00 for the well and septic, \$5,000.00 for electric fencing, and \$4,300.00 for the barn. Mr. Frommer noted in his analysis that some properties are being purchased by investors considering a potential return for natural gas leasing. He valued the acreage on that basis for illustration purposes, but opines that the proper valuation is based on use for agricultural or non-speculative purposes. As a result, he arrives at a per acre valuation of \$825.00 per acre, which computes to a \$207,900.00 value of the property as vacant land.

Mr. Frommer uses the sale of 21 Victory Hill Road and the contiguous vacant land as a comparable sale in valuing 315 Victory Hill Road. He applies a net adjustment of \$1,300.00 to

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The appraiser retained by Mr. Holcomb.

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The appraiser retained by the Town.

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This is \$22,600.00 more than the assessed value.

this sale to arrive at his valuation of \$270,000.00 for 315 Victory Hill Road.<sup>14</sup> His other comparables apply adjustments of \$30,300.00, \$110,600.00, and \$136,000.00 to account for differences in arriving at a comparable valuation.

Mr. Briggs values the vacant land at \$1,400.00 per acre and, using that figure, arrives at a land value of \$359,000.00. Thus, in applying his comparable sales, he adds or subtracts \$1,400.00 for each acre the comparable varies from the 315 Victory Hill Road property. Unlike Mr. Frommer, Mr. Briggs does not use the sale of 21 Victory Hill Road and the contiguous vacant land as a comparable sale. Instead, he uses the sale of various properties located in the Towns of Berkshire and Tioga (both in Tioga County) and the Towns of Lapeer (two separate properties) and Marathon (all three of which are located in Cortland County) as comparable sales to arrive at his valuation of \$375,000.00 for 315 Victory Hill Road.

As noted above, Mr. Frommer values the vacant land at \$825.00 per acre and Mr. Briggs assigns a value of \$1,400.00 per acre, which is a difference of \$575.00 per acre. Thus, the land value is \$207,900.00 according to Mr. Frommer and \$359,000.00 according to Mr. Briggs. Since the property is either 252 or 256 acres, depending on which appraiser's total acreage figure is used, this \$575.00 per acre difference amounts to either \$144,900.00 or \$147,200.00.

The differences in value assigned by each appraiser are largely due to Mr. Briggs's higher valuation of the acreage. However, the difference is reduced by Mr. Frommer's assignment of greater values to the improvements.

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The Court cannot reduce the fair market value of a property below the amount set forth in the Petition. As noted above, according to the Petition, the fair market value of this property is \$281,900.00.

While it does appear to be true that sales of acreage in Tioga County and the surrounding counties have been affected by natural gas speculation, at this point it is, in fact, only speculation. Whether natural gas drilling will come to Tioga County in the reasonably near future is uncertain. There has been a state moratorium on any natural gas drilling in New York for three years now and some or much of the market activity driven by this appears to have ebbed. The market for acreage and the activity of those purchasing with an eye toward natural gas drilling is simply too volatile to use those sales to value acreage. Given this situation, this Court is unwilling to value property based on any purchase that appears to be driven by natural gas. Accordingly, the Court will apply Mr. Frommer's valuation of \$875.00 per acre.

Both appraisals note that the improvements on the property are modest and some of them are not in pristine condition. The barn, for example, is weathered and could use some repairs. However, as Mr. Frommer places a higher value on the improvements, his figure will be used for them.

In light of the foregoing, the fair market value of the property is \$281,900.00.

#### **Conclusion**

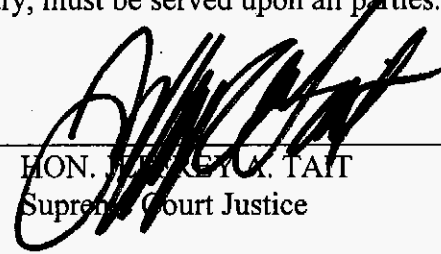
The combined fair market value of 21 Victory Hill Road (tax map # 7.00-1-20.10) and the vacant land on Victory Hill Road (tax map # 7.00-1-19.00) is \$275,000.00 for tax years 2010, 2011, and 2012.

The parties shall have sixty (60) days from the date of this Decision and Order to agree upon an allocation of the total assessed valuation between the properties or, if they are unable to do so, a hearing will be scheduled to address that issue.

The fair market value of 315 Victory Hill Road is \$281,900.00 for tax years 2010, 2011, 2012.

This Decision shall also constitute the Order of the Court pursuant to rule 202.8(g) of the Uniform Rules for the New York State Trial Courts and it is deemed entered as of the date below. To commence the statutory time period for appeals as of right (CPLR 5513[a]), a copy of this Decision and Order, together with notice of entry, must be served upon all parties.

Dated: December 13, 2012  
Binghamton, New York



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HON. JEFFREY A. TAIT  
Supreme Court Justice