At a term of the Supreme Court held in and for the County of Wyoming, at the Courthouse in Warsaw, New York, on the 21st day of June, 2013.

PRESENT: HONORABLE MARK H. DADD
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

In the Matter of

SYNERGY, LLC AND SYNERGY BIOGAS, LLC.
Petitioners

v.

Index No. 44855

SUSAN KIBLER, ASSESSOR, TOWN OF COVINGTON, NEW YORK; and
THE TOWN OF COVINGTON BOARD OF ASSESSMENT REVIEW
Respondents

WYOMING CENTRAL SCHOOL DISTRICT
Intervenor-Respondent

MEMORANDUM AND JUDGMENT

By petition pursuant to Article 78 of the CPLR, or, alternatively, pursuant to Article 7 of the RPTL, verified on July 5, 2012, Synergy, LLC, and Synergy Biogas, LLC, seek review of the tax assessment for the tax year 2012-2013 upon their property identified as tax parcel Number 37.-1-18.2/1 in the Town of Covington, New York. The petitioners contend that 1) the respondent assessor erred in failing to grant their application for a complete exemption from taxation for the parcel pursuant to RPTL §483-a and in classifying it as "877 Electric Power, Other Fuel" rather than "112 Dairy Farm," and 2) the respondent Board of Assessment

Review erred by confirming the determinations of the assessor. The respondents ask that the petition be denied upon the verified answer dated November 19, 2012. The intervenor-respondent asks that the petition be dismissed upon the verified answer dated November 29, 2012.

NOW, on reading the notice of petition and the petition, together with the annexed exhibits; the answers of the respondent and the intervenor-respondent; the certified record; the memorandum of law in support of the petition of Karl S. Essler, Esq., attorney for the petitioners; the memorandum of law in opposition to the petition of David M. Roach, Esq., attorney for the respondents, dated November 28, 2012; the memorandum of law of Philip G. Spellane, Esq., attorney for the intervenor-respondent, dated November 29, 2012; the reply affirmation of Karl S. Essler, Esq., dated December 3, 2012, together with the annexed exhibits and accompanying reply memorandum of law; and having heard Karl S. Essler, Esq., in support of the petition, and David M. Roach, Esq., and Phillip G. Spellane, Esq., in opposition thereto, and upon due deliberation, the following decision is rendered.

Initially, the Court notes that a proceeding pursuant to CPLR Article 78 is not the proper vehicle for challenging an allegedly unlawful or excessive property assessment (Viahealth of Wayne v. Vanpatten, 90 A.D.3d 1700 [4th Dept., 2011]). Accordingly, the Court will treat the proceeding solely as a tax certiorari proceeding commenced pursuant to RPTL Article 7.

Petitioner, Synergy, LLC, runs a large dairy farm operation. It owns several parcels on Lemley Road in the Town of Covington, including the parcel that is the subject of this proceeding. That parcel, identified on the tax assessment roll as Number 37.-1-18.2/1, encompasses land leased by Synergy, LLC, to the Petitioner, Synergy Biogas, LLC. On the parcel, a large biogas facility has been erected which is operated by Synergy Biogas, LLC.

The biogas facility consists primarily of a large anaerobic digester. Arrayed around it are several storage and receiving tanks, as well as the combined heat and power units that run on the methane gas produced in the digester. In their petition, the petitioners give the following description of the operation of the biogas facility:

The Synergy Biogas manure processing facility anaerobically

> digests 50,000 gallons per day of manure and waste feed from the Synergy dairy farm, along with approximately 10,000 gallons per day of food grade organic waste coming from outside sources. Anaerobic digestion of these materials produces biogas which fuels a generator producing electricity for sale to the power grid. The manure is piped directly from the dairy farm to the manure processing facility and digested biomass is piped back to fiber separators and storage lagoons on the dairy farm. [. . .] The end result is that the Synergy Biogas facility produces 15, 000 cubic yards a year of clean bedding used on the Synergy dairy farm (which has approximately 1,850 cows), and 15 million gallons a year of manure based fertilizer low in odor and with enhanced nutrient availability.

In terms of electricity production, the record indicates that the facility is capable of producing 17 million kilowatt hours annually.

The petitioners originally applied for tax exemptions for the facility under both RPTL §483-a – for "manure storage and handling facilities" – and RPTL §487 – for "farm waste energy system(s)." Petitioner's counsel now concedes that the facility is not, in fact, eligible for the RPTL §487 partial exemption because "its production of electricity [is] in excess of the maximum amount allowed by that statute." The petitioners contend, however, that the facility consists entirely of "manure storage and handling facilities," and is therefore entitled to a 100% exemption pursuant to RPTL §483-a.

Although the facility generates too much power to qualify for the RPTL §487 partial exemption, the Court agrees with petitioner's counsel's statement in his reply affirmation that "[t]he essential dispute in this proceeding is whether the digester facility is in fact a 'manure handling and storage facility' entitled to the exemption under RPTL §483-a, or whether it should be considered a 'farm energy waste system' [sic] under RPTL §487 . ." Section 487(f) defines "farm waste energy system" as "an arrangement or combination of farm waste electric

generating equipment or other materials, hardware or equipment necessary to the process by which agricultural waste biogas is produced, collected, stored, cleaned, and converted into forms of energy such as thermal, electrical, mechanical or chemical and by which the biogas and converted energy are distributed on-site." Section 487(e) defines "farm waste electric generating equipment" as "equipment that generates electric energy from biogas produced by the anaerobic digestion of agricultural waste, such as livestock manure, farming waste and food processing wastes . ." Under these definitions, it appears to the Court that the biogas facility clearly qualifies for tax purposes as a "farm waste energy system."

Petitioner's counsel nonetheless argues that the facility should receive the exemption provided by RPTL §483-a for "[s]tructures permanently affixed to agricultural land" which are "manure storage and handling facilities." Section 483-a does not further define the phrase "manure storage and handling facilities," and petitioner's counsel contends that it must be given a broad interpretation. Thus, since the biogas facility extracts methane from manure – producing large amounts of fertilizer and animal bedding in the process – and since the manure it utilizes is temporarily stored within the facility as it passes into and out of the digester, the facility, according to the petitioners, is entitled to be exempted as a "manure storage and handling facility."

While the Court acknowledges that the vague phrase "storage and handling" may invite the broad interpretation urged by the petitioners, the Court finds that the respondents did not act unreasonably in declining to read the statute in this manner. Indeed, as the respondents have pointed out, such a reading of the statute renders meaningless the partial exemption for "farm waste energy systems" on agricultural land contained in RPTL §487 – since all such systems would by definition already qualify for a full exemption under §483-a as "manure storage and handling facilities." Moreover, in the Court's estimation it was not unreasonable for the respondents to conclude that the use put to the manure in the biogas facility involved something more than mere "storage and handling," and that therefore RPTL §483-a did not apply to it. Also, having found that the facility is in reality best described as a "farm waste energy system," the Court finds that the respondents acted reasonably in classifying

in on the tax roll as "877 Electric Power, Other Fuel."

The burden of proof in this matter is on the petitioners to show that the property is entitled to be exempted, and "[i]n the case of statutory exclusions, the presumption is in favor of the taxing power" (Mobile Oil Corp. v. Finance Administrator of the City of New York, 58 N.Y.2d 95, 99 [1983]). For the reasons stated above, the Court finds that the petitioners have not met their burden of proof.

In light of the above decision, the Court finds it unnecessary to consider the claim – raised only by the intervenor-respondent – that the matter should be dismissed because the petitioners may have incorrectly identified the tax parcel on their application for the exemption.

NOW, THEREFORE, it is hereby

ORDERED that the petition is denied and the proceeding dismissed, without costs.

DATED: June 21, 2013

Acting Supreme Court Justice

GRANTED

JUN 21 2013

CHIEF CLERK
WYOMING COUNTY SUPREME COURT