

**Muldoon Hous. Dev. Corp. v Town Bd. of the Town
of Barton**

2015 NY Slip Op 32391(U)

December 16, 2015

Supreme Court, Tioga County

Docket Number: 46002

Judge: Eugene D. Faughnan

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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tioga County Courthouse, Owego, New York, on the 20th day of NOVEMBER, 2015.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TIOGA COUNTY

MULDOON HOUSING DEVELOPMENT CORP.,

Petitioner,

DECISION AND ORDER

-vs-

Index No. 46002
RJI No. 2015-0236-M

TOWN BOARD OF THE TOWN OF BARTON,
TOWN OF BARTON, TOWN ASSESSOR OF THE
TOWN OF BARTON, TOWN SUPERVISOR OF
THE TOWN OF BARTON, WAVERLY CENTRAL
SCHOOL DISTRICT, and TIOGA COUNTY
DIRECTOR OF REAL PROPERTY TAX SERVICES,

Respondents.

COUNSEL FOR PETITIONER

LECLAIR KORONA GIORDANO COLE LLP
By: Jeremy M. Sher, Esq.
150 State Suite, Suite 300
Rochester, NY 14614

COUNSEL FOR RESPONDENT
WAVERLY CENTRAL SCHOOL
DISTRICT:

HOGAN, SARZYNSKI, LYNCH, DEWIND &
GREGORY, LLP
By: James A. Gregory, Esq.
PO Box 660
Binghamton, NY 13902-0660

COUNSEL FOR RESPONDENTS
TOWN OF BARTON, TOWN
BOARD OF THE TOWN OF BARTON,
TOWN ASSESSOR OF THE TOWN
OF BARTON, TOWN SUPERVISOR
OF THE TOWN OF BARTON:

MOORE & WOODHOUSE, LLP
By: Stephen R. Hoffman, Esq.
HSBC Bank Building
150 Lake Street, Suite 3
Elmira, NY 14901-3401

COUNSEL FOR RESPONDENT
 TIOGA COUNTY DIRECTOR OF
 REAL PROPERTY TAX SERVICES:

TIOGA COUNTY DEPT. OF LAW
 By: Judith M. Quigley, Esq.
 Ronald E. Dougherty County Office Building
 56 Main Street, Room 204
 Owego, NY 13827

EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court upon Muldoon Housing Development Funding Corp.’s (“Petitioner’s”) Petition pursuant to CPLR Article 78 seeking to annul the determination of the Town Board of the Town of Barton (“Town Board”) wherein the Town Board denied Petitioner’s application for a refund of real property taxes paid for the 2014-2015 tax year.¹ Petitioners also allege a violation of Public Officers Law (“POL”) §103. Respondent, Tioga County Director of Real Property Tax Services (“Tioga County”), filed a motion to dismiss the Petition.

Petitioner filed a Verified Petition (with exhibits) dated September 9, 2015, and a Notice of Petition dated September 11, 2015 and a Memorandum of Law dated September 11, 2015. Petitioner also filed a Reply Attorney Affirmation dated November 18, 2015, an Affidavit of Darin Young (with exhibit) dated November 17, 2015 and a Reply Memorandum of Law dated November 18, 2015. The Town of Barton affiliated Respondents collectively filed an Answer and Objections in Point of Law dated November 13, 2015, an Attorney Affidavit (with exhibits) dated November 13, 2015 and a Memorandum of Law (with exhibits) dated November 13, 2015. The Waverly Central School District filed a Verified Answer dated November 5, 2015 and a Memorandum of Law dated November 10, 2015 and Tioga County filed a Motion to Dismiss and Affidavit (with exhibit) dated November 10, 2015.² Petitioner made demand from the Town

¹The Petition challenges the final determination by the Town Board, and the other Respondents are included as either being involved in the decision or affected by the outcome.

²Although named in the action, neither the Waverly School District nor Tioga County is truly a party to the action, but simply entitled to receive service of the Petition and Notice pursuant to RPTL § 708.

Respondents for “a certified transcript of the record of the proceedings under consideration.” That was provided to the Court at oral argument, and apparently to the Petitioner as well.

Factual Background

The facts underlying this petition are not in serious dispute. Petitioner is the owner of Muldoon Gardens. Muldoon Gardens is a housing facility in the Town of Barton which provides affordable housing to individuals aged fifty-five and older. Muldoon Gardens operates pursuant to regulatory agreements with New York State dated September 13, 2012 and September 12, 2014. Under RPTL §581-a, where property is being utilized to provide rentals to low income residents, the assessed value of the property shall be calculated utilizing the net operating income after all operating expenses are deducted from the effective gross income.

In the spring/summer of 2012, Petitioner approached the Assessor for Town of Barton, Catherine Edwards, to obtain confirmation that the Town of Barton will follow RPTL §581-a in determining the appropriate assessment for the property. In a letter dated July 5, 2012, Edwards confirmed that the Town would calculate the assessment utilizing the net operating income of the property pursuant to RPTL §581-a and that Petitioner’s initial estimates of net operating income were reasonable. However, she reserved the right to recalculate the assessment upon the implementation of the regulatory agreement with the state.

RPTL 581-a provides that the New York State Division of Housing and Community Renewal will promulgate regulations regarding the calculation of assessments for properties governed by the statute. Pursuant to 9 NYCRR 2656.3, “[t]he property owner(s) shall provide the local assessing unit with a copy of all applicable regulatory agreements and, on an annual basis, income documentation prior to the taxable status date.” Although Petitioner filed its regulatory agreement with the Tioga County Clerk, there is no indication that this was provided to the “local assessing unit” as required by 9 NYCRR 2656.3. Additionally, the only income information

provided as of the March 1, 2014 taxable status date for the Town of Barton was the initial estimate of income provided to the Town of Barton Assessor in 2012.

In light of the fact that neither the regulatory agreement nor the income statement/estimate of income statement was filed with the assessing unit, the Town of Barton Assessor utilized the Fair Market method to determine Petitioners assessment resulting in an assessed value of \$4,543,059 rather than the \$350,000 that an income method may have yielded. Petitioner did not grieve the assessment nor institute a tax certiorari proceeding. Rather, Petitioner waited over a year and filed an application for a refund pursuant to RPTL §550 alleging a clerical error. Essentially, Petitioner argues that it was granted the benefits of RPTL §581-a as evidenced by the Edwards letter of July 5, 2012 and that the recalculation of the assessment utilizing the fair market method was clerical error. As such, they are entitled to a refund for the 2014/2015 tax year.

Petitioners filed an Application for Refund and Credit of Real Property Taxes (RA-556) on April 20, 2015 alleging a clerical error resulting in a miscalculation of its assessment. On April 27, 2015, the Tioga County Director of Real Property, Terie Huseby, recommended a denial of Petitioner's refund application alleging that Petitioner did not file required information by the March 1 taxable status date and did not file a grievance of the assessment. On June 18, 2015, The Town of Barton Town Board met to consider Petitioner's application for a refund. A motion was made to enter executive session in light of "possible litigation" and the motion was carried. The Board remained in executive session for twelve minutes, after which the Board came out of executive session, and voted unanimously to deny the refund application.

Discussion

As noted above, RPTL 581-a states that where property is being utilized to provide rentals to low income residents, the assessed value of the property shall be calculated utilizing the net operating income after all operating expenses are deducted from the effective gross income. However, "[t]he property owner(s) shall provide the local assessing unit with a copy of all applicable

regulatory agreements and, on an annual basis, income documentation prior to the taxable status date.” 9 NYCRR 2656.3. Failure to provide the required information by the taxable status date does not result in the loss of 581-a status. *Warrensburgh Commons v. Town of Warrensburgh*, 69 AD3d 1282, 1284 (3rd Dept. 2010). However, where a property owner fails to provide the required documentation, the assessor may assume the property no longer qualifies, and use another method of valuation. *Id.* at 1284. The property owner is then left with the option of challenging the assessment through grievance and/or a tax certiorari proceeding.

In the present matter, the Petitioner failed to provide the Town with the 2012 regulatory agreement and an income statement for 2013 by the taxable status date of March 1, 2014. The only information in the Assessors possession as of the taxable status date was the original estimate of net income from some 20 months earlier. Based upon Petitioner’s failure, the Assessor utilized an alternative method of valuation (i.e. fair market), and increased the assessed value and the tax on the property.

The Petitioner argues that they could not provide a net income statement as the property had not yet commenced renting. The Regulations provide that “if the most recent financial statement does not reflect twelve (12) months of occupancy, the most recent operating budget approved by the municipal, state, or federal government, or instrumentality thereof, that is party to the regulatory agreement” shall be provided. 9 NYCRR 2656.2. It is entirely unclear whether the most recent operating budget was the projection provided in 2012. However, even if the 2012 projections were the most recent operating budget, the fact remains that the 2012 Regulatory Agreement was not provided to the local assessing unit as required by 9 NYCRR 2656.3, but rather filed with the County Clerk.

Petitioner argues that the Assessor’s use of an alternative method for valuing the property was a clerical error or an error of essential fact entitling it to apply for a refund pursuant to RPTL §556. However, the Court finds no such error on the part of the Assessor. Rather, the Assessor noted that documentation was missing and assumed that the property did not qualify and utilized an

alternative method for valuing the property. Due to the aforementioned failure to provide required documentation by the taxable status date, the assessor was within her authority to reassess the property based upon the fair value method. *Warrensburg* at 1284. Therefore the Court finds that the reassessment was not a clerical error or an error of essential fact entitling Petitioner to a refund, and that the Assessor properly exercised her authority under the law.

If it believed the re-assessment was improper, the Petitioner's legal recourse was to grieve the assessment and/or pursue an Article 7 Tax Certiorari proceeding. However, since it did not formally contest the assessment by seeking a refund until nearly 11 months after a grievance would need to be filed³, this recourse for redress was not available.

Finally, Petitioner challenges the determination of the Town Board to deny a refund pursuant to POL §103. Petitioner alleges that the Town Board improperly went into executive session and failed to deliberate in public regarding its application for a tax refund.

“Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section [one hundred five] of this article.” POL §103. The Town Board alleges that executive session was appropriate as the session was called for “discussions regarding proposed, pending or current litigation” POL §105 (1)(d).

Upon the record before the Court, it is clear that the Town Board violated POL §103 by entering an executive session to discuss the Petitioner's application for a refund pursuant to RPTL §556. The record is devoid of evidence that there was proposed, pending or current litigation regarding this matter. That likelihood that Petitioner would commence an action if the Board's determination was adverse to its interests is insufficient to invoke this very narrow exception to the Open Meetings Law. *Weatherwax v. Town of Stony Point*, 97 AD2d 840 (2nd Dept. 1983).

³May 26, 2014 was the deadline to grieve an assessment for the 2014/2015 tax year.


Having found a violation of POL §103, the burden shifts to the Petitioner to show good cause for the Court to invalidate the Board's determination. POL §107. The Petitioner has failed to offer any basis beyond the violation itself, for invalidating the Town Board's determination.⁴

Therefore, the Court finds a clear violation of POL §103 but fails to find good cause to annul the decision of the Town Board. In light of the Court's finding that Petitioner has failed to show good cause to annul the determination, the Court declines to impose any sanction on the Town Board.

Accordingly, the Petition seeking to overturn the Town Board's decision is **denied**; the motion to dismiss the Petition is **granted**.

This constitutes the Decision and Order of the Court.

Dated: December 16, 2015
Owego, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice

⁴Even if the Court were to invalidate the Board's determination, it would be inclined to refer the matter back to the Board for reconsideration pursuant to POL §107, in light of the Court's findings on the merits.