

Matter of Kovacevic v Minoia

2023 NY Slip Op 30878(U)

March 20, 2023

Supreme Court, Broome County

Docket Number: Index No. EFCA2022001418

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 Broome County Courthouse, Binghamton, New York, on the 16th day of November 2022, by Microsoft Teams.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT: BROOME COUNTY

In the Matter of the Petition of

Blazo Kovacevic and Natalija Mijatovic Kovacevic,
Randolph Holly and Karen Holly,
Misbahuddin Qidwai, and Kim C. Miller,

Petitioners,

-vs-

DECISION

Index No. EFCA2022001418

Mark Minoia, in his capacity as Assessor of the Town of Vestal, New York, the Town of Vestal, New York, the Town of Vestal Board of Assessment Review, the County of Broome, and the Vestal Central School District,

Respondents,

For Review of Tax Assessment under Article 7 of the Real Property Tax Law.

APPEARANCES:

PETITIONERS:

PAUL T. SHEPPARD, ESQ.
Hinman Howard & Kattell, LLP
80 Exchange Street
Binghamton, NY 13905

RESPONDENTS:

THOMAS J. MURPHY, ESQ.
The Law Firm of Frank W. Miller, PLLC
6575 Kirkville Road
East Syracuse, NY 13057

EUGENE D. FAUGHNAN, J.S.C.

Petitioners are owners of four separate parcels of land located in the Town of Vestal (Kovacevic property, Holly property, Qidwai property and Miller property), and are challenging their tax assessments. This Petition is a combined RPTL Article 7/CPLR Article 78 petition for mandamus, enforcement of certain court orders and settlement agreements, and reductions in tax assessments based on RPTL §§ 727 and 739. The Petition is opposed by the Respondents, Town of Vestal and the Town Assessor. Oral argument was held and both parties appeared virtually. After due deliberation, this constitutes the Court's Decision and Order.¹

BACKGROUND FACTS

Blazo Kovacevic and Natalija Mijatovic Kovacevic ("Kovacevics") own property at 190 Murray Hill Road in Vestal, NY. They filed a prior Petition in this Court in 2021 challenging the 2021 assessment on that property (EFCA2021001937), which resulted in a Decision and Order on March 16, 2022, granting summary judgment to Kovacevics. A detailed recitation of the facts are contained in that Decision and Order, but will be briefly summarized here. In the Town's 2020 assessment, the Kovacevics' property was valued at \$363,400. Kovacevics filed a Small Claims Assessment Review (SCAR hearing) and the hearing officer reduced the assessment to \$265,272. In 2021, the Town again increased the assessment to \$291,800. Kovacevics filed a Petition alleging, among other things, that the Town could not make any change to their assessment in 2021 because RPTL § 739 prohibits a change in assessment in the year following a successful assessment challenge through a SCAR hearing ("one-year freeze"), unless an exception under RPTL § 739(2) applies. This Court found that the Town had not established the applicability of any of the exceptions, so Kovacevics were granted summary judgment, leaving their assessment the same as it was following the 2020 SCAR hearing. The resulting Order and Judgment also provided that the assessed valuation would not be changed on the 2022, 2023 and 2024 assessment rolls, subject to the exceptions set forth in RPTL § 727(2). Within a week of the entry of the Order and Judgment, the Town increased the Kovacevics' 2022 assessment from \$265,272 to \$283,840.

¹ All the papers filed in connection with the motion and opposition are included in the NYSCEF electronic case file and have been considered by the Court.

Randolph Holly and Karen Holly (“Hollys”) own property at 339 Foster Road in Vestal. On the 2021 tentative assessment roll, the Holly property was assessed at \$686,700. The Hollys also proceeded to a SCAR hearing, where the 2021 assessment was reduced to \$583,150. Despite the one-year freeze, on or about May 1, 2022, the Assessor proposed a tentative change in assessment to \$629,900.

Misbahuddin Qidwai (“Qidwai”) owns property at 36 Ararat Drive in Vestal. On the 2019 tentative assessment roll, the Qidwai property was assessed at \$490,000. Eventually, following a SCAR hearing, the 2019 assessment was reduced to \$403,000. In the interim, Qidwai also challenged his 2020 assessment and brought an Article 7 proceeding (EFCA2020001501). The parties entered into a stipulation to resolve EFCA2020001501. The stipulation provided that Qidwai would be entitled to a three-year freeze on his assessment, subject to the exceptions in RPTL § 727(2). The assessment stayed the same for 2021, but on or about May 1, 2022, the Assessor issued a Notice of Change of Assessment, tentatively increasing the assessment from \$403,000 to \$423,200.

Kim C. Miller (“Miller”) is the owner of property at 1305 Front Street in Vestal. On the 2020 tentative assessment roll, the Miller property was assessed at \$127,000. Miller commenced a RPTL Article 7 action challenging the 2020 final assessment (EFCA2020001497). The parties agreed to reduce the assessment from \$127,000 to \$67,000 and entered into a settlement agreement approved by the Court and incorporated into an Order. The agreement stated that the assessment would remain at \$67,000 for the 2021, 2022 and 2023 assessment rolls; but also provided that if the Town undertook a Town-wide revaluation, involving the inspection, appraisal and valuation of all properties within the Town, that the assessment could be changed. On the 2021 assessment roll, the assessment was maintained at \$67,000. On or about May 1, 2022, the tentative assessment was increased from \$67,000 to \$71,000.

Petitioners collectively brought this action challenging their respective 2022 property assessments. The Petition asserts five causes of action; the first four causes are for mandamus under Article 78, one cause for each property; and the fifth cause of action is based on RPTL Article 7 on the grounds of inequality and/or excessiveness.

Petitioners claim that, based on Court orders and judgments, settlement agreements or otherwise, the Town was prohibited from changing their assessments unless the Town established

that an exception under RPTL § 727 or RPTL § 739 applies. Petitioners maintain that no such exception applies, and that the assessments were all subject to a “freeze” following their successful prior challenges to their assessments.

Respondents filed a Verified Answer and Objections in Point of Law, raising several issues including an argument that the properties were part of a re-evaluation and update of all real property of the assessment role. Both RPTL § 727 and RPTL § 739 contain exceptions when there has been a revaluation or update of all real property on the assessment rolls. The parties disagree as to what actions or processes constitute a Town wide revaluation thereby triggering one of the exceptions. The Town takes the position that its participation in, and compliance with, a Non-Reappraisal Reassessment (“NRR”) program is proof of a revaluation or update of the real property.

LEGAL DISCUSSION AND ANALYSIS

Pursuant to RPTL § 739(1) “where the decision of a small claims hearing officer orders a reduction in an assessment, the assessed valuation contained in such decision shall not be thereafter changed on such property for the next assessment roll”, unless one of the exceptions in RPTL § 739(2) is applicable. Thus, after a successful SCAR hearing, the property owner enjoys a “one year freeze” on the assessment, absent one of the enumerated exceptions. *See, Matter of ELT Harriman, LLC v. Town of Woodbury*, 128 AD3d 201 (2nd Dept. 2015); *Baldwin Research Inst., Inc. v. Board of Assessment Review of Town of Amsterdam*, 66 AD3d 1304 (3rd Dept. 2009) *app denied* 14 NY3d 702 (2010). A similar freeze is provided under RPTL § 727 (1), which gives a three-year moratorium following a successful court action. The purpose of the “freeze” is “to prevent assessing units from increasing judicially reduced assessments in succeeding years, to prevent taxpayers from perpetually challenging their assessments ... and to ‘spare all parties the time and expense of repeated court intervention.’” *Rosen v. Assessor of Troy*, 261 AD2d 9, 12 (3rd Dept. 1999) (citation omitted); *see Matter of T.B.S. Realty Mgt., LLC v. Town of Ramapo*, 175 AD3d 694 (2nd Dept. 2019). A CPLR Article 78 proceeding in the nature of mandamus is a proper vehicle to compel respondents to comply with the terms of the prior consent orders and decisions. *See, EMP of Cadillac, LLC v. Assessor of Spring Valley*, 15 AD3d 336 (2nd Dept. 2005).

Petitioners have all submitted evidence of their successful prior challenges to their assessments. Accordingly, they would be entitled to either a one-year or three-year freeze, and their

property would not be subject to a change in the assessment for 2022. Thus, they have all satisfied their initial burden. *See, Matter of Akey v. Town of Plattsburgh*, 300 AD2d 871, 872 (3rd Dept. 2002); *accord Redhead Props. v. Town of Wappinger*, 2006 NYLJ LEXIS 3067 (Sup. Ct., Dutchess County 2006). The Town is required to show that the change in assessment was authorized by an exception contained in RPTL § 739(2), or if appropriate, § 727 (2). *See generally, Baldwin Research Inst., Inc. v. Board of Assessment Review of Town of Amsterdam*, 66 AD3d 1304 (3rd Dept. 2009); *Matter of Akey v. Town of Plattsburgh*, 300 AD2d 871; *Matter of Washington Commons Assoc. v. Bd. of Assessors*, 4 Misc3d 1027(A) (Sup. Ct., Albany County 2004).

There are eight separate exceptions in RPTL § 739(2), which are the same as RPTL § 727(2). The Town's main argument is for an exception based on "a revaluation or update of all real property on the assessment roll." The rationale for this exception to the "freeze" is that the intended benefit of decreased litigation over assessments is ameliorated when there is some assurance that the value of the property is approximately correct through regular and updated assessments, and that the purported revaluation of all real property justifies deviating from the previously determined assessment.

Neither statute provides a definition for "revaluation or update", but in a case brought pursuant to RPTL § 727(2), the Court of Appeals concluded "revaluation or update" should be interpreted consistent with RPTL § 102 (12-a), which states that "[r]evaluation', 'reassessment' or 'update' means a systematic review of the assessments of all locally assessed properties, valued as of the valuation date of the assessment roll containing those assessments, to attain compliance with the standard of assessment set forth in subdivision two of section three hundred five of this chapter" *Malta Town Ctr. I, Ltd. v. Town of Malta Bd. of Assessment Review*, 3 NY3d 563, 568-569 (2004). Although *Malta* involved application of RPTL § 727(1) and (2), the exception contained in RPTL § 739(2)(a) should be read the same as in RPTL § 727(2)(a). *See generally, Benesowitz v. Metro. Life Ins. Co.*, 8 NY3d 661 (2007); *Riley v. County of Broome*, 95 NY2d 455 (2000).

In *Malta*, the Town of Malta participated in an annual real property reassessment program administered by the New York State Office of Real Property Services (ORPS).² The Town of *Malta* argued that it satisfied RPTL § 727(2) by its participation in the State's annual reassessment

² ORPS is now known as ORPTS.

plan, which triggered an exception to the three-year freeze that attached after a successful court challenge.

Under RPTL § 1573, state aid is available for municipalities that have developed and implemented ongoing programs to keep assessments up to date.³ The Court of Appeals concluded that “an annual reassessment under section 1573 is evidence of a revaluation or update under section 727.” *Id.* at 570. Here, the Town of Vestal makes a similar argument, but is based on the NRR.

1. Admissibility and sufficiency of Respondents’ opposition papers

As noted above, in this case, the Town of Vestal and the Town Assessor filed a Verified Answer with Objections. Respondents also filed a Memorandum of Law, an Attorney Affidavit from Thomas J. Murphy, Esq., an affidavit of the Town Assessor Mark Minoia⁴, and Exhibits “A” through “G”.⁵

The Town claims it satisfied its obligation under RPTL § 739(2)(a) and/or § 727(2)(a) by showing there was a revaluation or update of all real property on the assessment role in 2022. In particular, Minoia states that the Town participates in an annual NRR, which the Town contends is evidence that the residential properties were properly analyzed to assure that the values being reviewed were consistent throughout the Town. The Town posits that its completion of the NRR is the equivalent of town-wide revaluation under RPTL § 739(2)(a), similar to the finding made in *Malta*.

The Minoia “affidavit” submitted in opposition to the Petition is a three-page typed statement which is signed by Minoia on the third page, and also contains a notary stamp and signature from a notary on page 3. There are also two additional pages appearing after the three-page statement titled “Town of Vestal Assessor’s Office: Overview of Reassessment process”, but there is no indication if those two pages are an Exhibit or part of the “affidavit”.

³ RPTL § 1573 was substantially amended in 2010, after the *Malta* decision, and those amendments will be discussed below.

⁴ Petitioners dispute that the Minoia document is an “affidavit” because, among other things, it is unsworn.

⁵ Petitioners’ counsel points out, and the Court agrees, that it is difficult to determine if the Exhibits are intended to go with the Minoia “affidavit” or the Murphy affidavit, since the Minoia “affidavit” does not reference or describe any of the Exhibits; and attorney Murphy’s affidavit does not indicate any personal knowledge of the contents of the Exhibits.

In reviewing the Minoia statement, the Court observes there is no jurat showing an oath or other swearing language (*see, Holder v. Menorah Home & Hosp. for the Aged & Infirm*, 36 Misc3d 1210(A) [Sup. Ct., Kings County 2011]), nor is there any language that the instrument was acknowledged (*see, Sparaco v. Sparaco*, 309 AD2d 1029 [3rd Dept. 2003]), or any language to show that the instrument was signed before the notary. “An affidavit is a sworn written statement.” Siegel, NY Prac § 205 (6th ed.). A jurat is a “certification added to an affidavit ...stating when and before what authority the affidavit was made [and] certifies three things: 1) that the person signing the document did so in the officer’s presence, 2) that the signer appeared before the officer on the date indicated, and 3) that the officer administered an oath or affirmation to the signer, who swore to or affirmed the content of the document.” (Black’s Law Dictionary [11th ed. 2019]). There is no jurat at the end of the document, so there is no proof that the signer signed in the presence of the notary, or that he was duly sworn. There is also no language in the statement indicating that the person making the statement was sworn. An affidavit usually begins with some indication that the person was duly sworn, but there is no such statement in this document. In fact, the first line is not a grammatically correct sentence, and the customary language to the effect that the person was “duly sworn” is conspicuously absent. While there is flexibility concerning the attestation language that can be used, “[a]n oath or affirmation shall be administered in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs.” CPLR § 2309(b).

In this case, the statement from Minoia is bereft of any indicia necessary to constitute a valid affidavit. Although it was notarized, it did not contain a jurat or other indication that Minoia had been sworn or taken any oath, nor did it contain any statement within the document attesting to the truth of the matters. *See, e.g. American Country Ins. Co. v. Umude*, 176 AD3d 542 (1st Dept. 2019). The Court has discretion to accept an affidavit that contains a technical defect in the jurat (*Liberty Mutual Ins. Co. v. Bohl*, 262 AD2d 645[(2nd Dept. 1999)], but in this case there is no jurat at all. The defect is nontechnical and cannot be disregarded by the Court. *Bowen v. Ulster County Bd of Elections*, 21 AD3d 693 (3rd Dept. 2005). Therefore, the Minoia statement is not a valid affidavit (*see, Lamberti v. United States*, 22 FSupp2d 60 [SDNY 1998], *aff’d* 201 F3d 430 [2nd Cir. 1999]) and is not admissible. *Morales v. Gross*, 191 AD3d 439 (1st Dept. 2021).

With respect to the two-page document entitled “Overview of Reassessment Process” attached to the Minoia statement, there is no foundation for that document, and it is not referenced in the Minoia statement. It is also not separately certified or authenticated. Therefore, it is not admissible and is of no evidentiary value.

Respondents also submitted an affidavit from Attorney Murphy, dated October 13, 2022. Murphy’s affidavit makes reference to Exhibits “A” through “G”. An affidavit of an attorney with no personal knowledge of the facts is without any probative value. *Sturtevant v. Home Town Bakery*, 192 AD2d 904 (3rd Dept. 1993); *accord Talbot v. Heimbaugh*, 239 AD2d 648 (3rd Dept. 1997); *Hasbrouck v. City of Gloversville*, 102 AD2d 905 (3rd Dept. 1984), *aff’d* 63 NY2d 916 (1984); *see, Zuckerman v. City of New York*, 49 NY2d 557 (1980). Murphy’s affidavit does not demonstrate any personal knowledge of the facts and circumstances concerning the assessment procedures used or any other aspect of this case. It should also be noted that Attorney Murphy is an attorney who was retained for this litigation, not the Town Attorney. His personal knowledge of the facts cannot be presumed, and at oral argument he conceded that he was not familiar with all the procedures involved in the Town’s assessment process. Without any personal knowledge, Murphy’s affidavit is insufficient to raise a question of fact.

Nonetheless, an attorney’s affidavit can serve as a vehicle for the submission of admissible documents. *Id.* at 563. Although Murphy’s affidavit references the Exhibits, his affidavit does not reveal personal knowledge of any of their contents and is essentially just a list of the Exhibits with no explanation, or in some instances a brief conclusory explanation. The Exhibits themselves are neither certified nor authenticated in any manner. They include emails, ORPTS publications, charts, graphs and other miscellaneous details that are not explained in Respondents’ opposition. What is clear, however, is that Respondents have not shown the relevance or admissibility of the Exhibits. The whole of Murphy’s affidavit, which is not based on personal knowledge, and the Exhibits are not admissible. Likewise, Minoia’s statement does not describe the Exhibits or identify how they support Respondents’ arguments.

In sum, the Respondents’ opposition consists of an inadmissible statement from Minoia, an inadmissible affidavit from Attorney Murphy, and a bevy of exhibits that have not been shown to be admissible. Accordingly, Respondents have not met their burden in opposition to the Petition.

2. Substance of Respondents' submissions

Even if the Court were to accept the Respondents' submissions, and attempted to glean the significance of those papers, Respondents have failed to meet their burden. The Town has not established that there was a revaluation or update of all real property on the assessment roll which would trigger an exception under RPTL § 727 or § 739.

In *Malta*, the Court of Appeals concluded that the Town had established the applicability of the revaluation exception [under RPTL § 727] by virtue of the fact that the Town submitted proof that ORPS had found the Town to be in compliance with the State's annual reassessment plan under RPTL § 1573. The Court held that "evidence of [an] annual reassessment under section 1573 is the equivalent to a 'revaluation or update of all real property' under section 727 (2)(a)." *Malta*, 3 NY3d at 571.

Here, the Town of Vestal argues that its participation in the NRR program is sufficient to constitute a revaluation or update of all real property. Respondents' papers do not provide legal support for that proposition, nor do they indicate how the Exhibits supposedly lead to that conclusion, leaving the Court to sift through the documents, interpret them and speculate as to the arguments. A party's position and arguments should be clearly identified with specific references to the evidence supporting them, rather than placing that burden on the Court. Nevertheless, the Court will endeavor to ascertain arguments, and weigh the merits of Respondents' position.

Exhibit "A" starts with a one-page document with bullet points that seems to be an outline of the Town's argument. It states that "based on its participation in New York State's Non-Reappraisal Reassessment Program, the Town of Vestal Assessor's Office performed a thorough systematic review and analysis of all assessed properties on the assessment roll." That conclusion should be supported by evidence and argument, but is not. Instead, additional documents are attached to the Exhibit without further explanation. There is an email exchange between the Town Assessor's Office and one Kathleen Kearney, who is apparently an employee of a New York State tax office. Ms. Kearney wrote that "the NRR program is intended to help verify municipalities which want to keep their LOA [level of assessment] at 100% through Non-Reappraisal Reassessing." Ms. Kearney is not identified in Respondents' papers, so the Court cannot adequately consider her qualifications or the weight to be given to her statements, which are unsworn in any

event. However, the statement itself does not prove that compliance with the NRR triggers an exception under RPTL § 727 or § 739.

Exhibit “A” also contains additional information (as noted above, generally hearsay and unauthenticated information) which is not specifically identified or referenced. There is a page titled “Reassessment Methodology” but the Court cannot determine the source of that document or its significance. Accordingly, the Court cannot give it any weight. Exhibit “A” also contains Publication 1016 from ORPTS, which was revised in August 2010. That publication deals with Level of Assessments Determinations, and Assessor’s responsibilities in connection with that determination. It is not at all clear that the publication is the most up to date version, or how it supports the Town’s position in the current context. Both those documents simply describe procedures related to assessment methods, but do not explain how they prove a revaluation or update of all real property.

Exhibit “B” consists of ORPTS publication 1029 entitled “Guidelines for Non-reappraisal Reassessments.” Respondents did not point to anything within that publication indicating that compliance with the NRR was the equivalent of a revaluation or update, and the Court did not find any such statement. Simply attaching a publication without additional evidence or explanation is of no benefit to the Court. This background information must be tied to evidence in this record establishing that the Town’s processes were in conformity with the NRR rules, and that such compliance equates to a finding that the Town conducted the equivalent of a revaluation or update of all real property on the assessment roll. That is clearly not include in Exhibit “B”, nor is it specifically articulated in the Respondents’ opposition.

Exhibit “C” contains:

- 1) A chart listing all the Towns⁶ in New York, and the year of the last reassessment. The apparent significance is that Town of Vestal is listed as having completed a reassessment in 2022;
- 2) A state map showing reassessment activity;
- 3) 2021 Market Value Survey regarding Assessment Equity.

Again, the Town has failed to provide any certification, authentication or affidavit concerning these documents. Apparently, however, they are alleged to be documents generated by

⁶ The Court cannot ascertain if it is a complete list of Towns. Whether it is a complete list or not has no bearing on the Court’s analysis.

ORPTS. Other than that, it is unclear what relevance attaches to any of the information concerning what other Towns are doing. The Exhibit also does not indicate who makes the determination as to when the last assessment was conducted, and if that reassessment is the equivalent of revaluation or update under RPTL § 727 or § 739.

Although Exhibit “C” identifies the 3 listed items above, Exhibit “C” also includes Exhibit “E.3” and “E.4”. While those exhibits may have simply been mis-labeled or inadvertently placed with the other documents in Exhibit “C”, Respondents failure to identify or refer to Exhibits “E.3” and “E.4” makes it impossible to determine what they are meant to prove. In any event, Exhibits “E.3” and “E.4” appear to deal with prior tax years and are not relevant to the 2022 tax assessment.

Exhibit “D” has 4 sub exhibits. These deal with the Town’s written declaration of its intent to participate in the 2022 NRR (required under Publication 1028); emails and documents regarding the process; various charts, graphs, tables and calculations regarding sales and other methodology concerning assessments; additional information in the form of spreadsheets, narrative and other documents utilized by the Town of Vestal in support of its 2022 NRR. Exhibit “E.1” also makes an unexpected appearance in Exhibit “D”, with the same confounding result as Exhibit “C”. The haphazard identification of the exhibits adds undue confusion, which might have been somewhat lessened had the Respondents referred to the Exhibits in affidavits and a Memorandum of Law.

The documents in Exhibit “D” contain an abundance of numbers, charts and calculations, no doubt intended to highlight the information upon which the Respondents relied in making their assessment determinations. However, simply providing a copious amount of statistical information without explanation as to what those numbers mean, or how they were used, is of no assistance to the Court. Even if this is the type of information that is properly considered by a Town in making assessment determinations, Respondents have not identified how that information led to the current assessments. Respondents have also failed to show that any of the trending information upon which they apparently rely results in proper assessments for these Petitioners.

Exhibit “E” contains sub exhibits and includes information similar to Exhibit “D”, except that it deals with 2020 and/or 2021 assessments. That is not the tax year involved in this Petition and is not relevant.

Exhibit “F” contains written statements from a Real Property Analyst 2 on ORPTS letterhead stating that the Town of Vestal established a final State equalization rate of 100% in both

2021 and 2022; and certificates entitled “Excellence in Equity” from ORPTS for 2021 and 2022 recognizing the Town “for its efforts to provide property owners with fair and equitable assessments on” those rolls.

Exhibit “G” contains various assessment documents of general information and recent assessment histories of the Petitioners in this action. Some of that information is related to the court actions from prior years.

After reviewing the “affidavits” and questionable Exhibits, Respondents have not established an exception to the one-year or three-year freeze. In *Malta*, the Court found that compliance with the state aid program under RPTL § 1573 was sufficient to constitute a revaluation or update of all real property. In this action, the Town of Vestal seeks to extend that a step further and find that compliance with the NRR program also qualifies. However, the Town has provided no legal support for that proposition, and the argument is less persuasive than under section 1573. First, the NRR program is not a statutory program. The Legislature did not include completion of the NRR as one of the enumerated exceptions, and *Malta* only held that compliance with section 1573 was equally sufficient for an exception. This Court has no authority to add completion of the NRR as an exception to the freeze. Although *Malta* extended the concept of revaluation pursuant to RPTL § 727 and § 739 to include those situations where a municipality received state aid under RPTL § 1573, it is quite a different matter to permit the further extension to a non-statutory program like NRR. Second, the Town has not shown, or even alleged, that it received state aid pursuant to RPTL § 1573 or NRR, which distinguishes this case from *Malta*. Third, RPTL § 1573 has been amended since the *Malta* decision, so it is not clear that compliance with the revised statute would still equate to a revaluation or update of all real property.

The revisions to RPTL § 1573 eliminated annual and triennial aid programs and replaced them with a new program to provide aid to assessing units that implement reassessments on a cyclical basis. That section now requires that the municipality submit a plan, approved by OPRTS, at least four years in length, to keep assessments at market value; and also provides for reassessments (complete reappraisals) at least once every four years. Inventory data must also be collected at least every 6 years, and that requires a physical inspection of each parcel. See, RPTL § 1573(1). The pertinent Regulations provide that:

(a) In reassessment years.

(1) The reassessment must:

- (i) be conducted pursuant to a plan for cyclical reassessment of not less than four years,
 - (ii) provide for the **reappraisal of all parcels in the first and last year of the plan,**
 - (iii) provide for a **reappraisal of all parcels at least once every four years;** and
 - (iv) collect inventory data at least once every six years.
- (2) Reappraisal means developing and reviewing a new determination of market value for each parcel, based upon current data, by the appropriate use of one or more of the three accepted approaches to value (cost, market, or income).
- (3) Review of the appraisal values consists of a visit to each property, and includes a review of the recorded inventory, examination and analysis of the appraisal estimates, and determination and documentation of a final appraised value. An office review may be substituted if appraisers have collected data or reinspected the property characteristics data as part of the reappraisal, or if the review utilizes oblique aerial, orthophoto, or street-level photography that was taken within three years of the reappraisal. In special assessing units an office review may be substituted if the property characteristics data has been systematically collected from other governmental sources.

20 NYCRR § 8201-3.3 (2023 Supplement) (emphasis added).

Turning again to ORPTS publication 1029 (included in Respondents' Exhibit "B"), that document contains a passage which states:

Please see Publication 1028, Guidelines for Cyclical Reassessments, for details about the statutory requirements and benefits of reassessment which are discussed in detail there. That document also contains information about how a municipality may receive aid for conducting reassessments (full reappraisals) on a cyclical basis, and the requirements of a plan to qualify for that aid.

The Town has not provided evidence that it received State aid under the NRR program or RPTL § 1573. The Town has also failed to provide Publication 1028, or evidence that it complied with requirements within that Publication. However, the Court has reviewed, and taken judicial notice of Publication 1028, which does not support Respondents' position.

ORPTS Publication 1028 describes NRR as a means to maintain uniformity and/or level of assessment in the years where a full reappraisal is not conducted. "Assessing units that conduct a non-reappraisal reassessment in an interim year of a cyclical reassessment will not be eligible for the aid of up to \$5/parcel, but will be eligible for the 'non-appraisal year' aid of up to \$2/parcel." ORPTS Publication 1028 at p.6. This framework shows that NRR is a component of the RPTL § 1573 requirements, but completion of the NRR procedures does not establish full compliance with RPTL § 1573. Here, the Town has not shown that it received state aid under RPTL § 1573; the Town has not submitted any evidence that it has an approved "cyclical reassessment" plan which

would be required under that section. ORPTS Publication 1028 also states that one of the requirements for cyclical assessment includes reassessment (complete reappraisals) implemented pursuant to a plan approved by ORPTS. It further goes on to say at p. 7 that “review of all appraisal values is required as part of a reappraisal. This consists of a visit to each property, to include review of the recorded inventory, examination and analysis of the appraisal estimates, and the determination of a final appraised value.” Respondents have not alleged that visits were made to each property. There is no letter or certification from ORPTS that the Town has completed an annual reassessment plan or participates in an approved “cyclical reassessment” plan.

Regardless of whether the Town completed the NRR to the satisfaction of ORPTS, there are additional requirements to satisfy under RPTL § 1573, which have not been shown in this case. As a result, *Malta* does not apply, and Respondents have not shown the NRR is the equivalent of a revaluation or update under section 727 or 739; nor have Respondents established that the NRR involves a systematic review or systematic analysis of all locally assessed properties.

The facts actually belie the Town’s position. At best, the Assessor determined that residential properties had increased by a certain percentage depending on the neighborhood. That is not evidence of a full town wide revaluation. Furthermore, the evidence shows that the Town did not change the values uniformly on all properties within particular neighborhoods. Had that been done, it would be supportive of a systematic analysis, but when the properties are not treated uniformly within a particular neighborhood without explanation, it undercuts the argument that assessments have been properly adjusted.

Further, to accept Respondents’ argument would undermine the freeze following a successful court action or SCAR hearing challenging a property assessment. The statutes provide for a freeze with the goal being to avoid repeated litigation. Where there has been a town wide reassessment, there is a reasonable basis to permit changes to an assessment despite the successful previous challenge. Even if the rigorous requirements of RPTL § 1573 can still be viewed as sufficient evidence to be the equivalent of a revaluation, the facts in this case highlight the folly of the Town’s position. The Town has repeatedly sought to change assessments in the succeeding year on the basis of compliance with the NRR. Without undertaking a full reassessment, or cyclical reassessments, and without undertaking any physical review of the properties, the Town attempts to

use its purported compliance with ORPTS rules for NRR programs as the basis for an exception to the freeze.

It also bears noting that the exceptions under RPTL § 727 and § 739 are only applicable when there is a Town wide revaluation of all property. In addition to not establishing a Town wide valuation of all residential property, the Town has not shown that there was a revaluation of commercial property or vacant property or, alternatively, that OPPTS concluded that commercial and vacant properties did not need any adjustments. Since the Town has not established that all properties were revalued, it has not proven an exception applies.

CONCLUSION

Based on all the foregoing, the Court finds that Respondents have failed to establish an exception to the statutory freeze following a successful challenge to the property assessments of these Petitioners. As a result of this determination, consideration of Petitioners' Article 7 challenges is unnecessary.

Therefore, the Petition is granted. Petitioner is directed to submit an Order on notice.

THIS CONSTITUTES THE DECISION OF THIS COURT.

Dated: March 20, 2023
Binghamton, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice