>>>>>>MARCH 3 2014 PROOF<<<<<<<

Westchester County Bar Association

Westchester Bar Journal

Volume 39, No. 1 | Winter/Spring 2014

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2012 Survey of Tax Certiorari, Tax Exemptions and Eminent Domain

BY HON. THOMAS A. DICKERSON, HON. DANIEL D. ANGIOLILLO AND JOHN MECHMANN, ESQ.*

2012 WAS A PARTICULARLY IMPORTANT YEAR in the local fiscal arena of real property tax assessments and exemptions. Since its enactment on June 30, 2011 General Municipal Law §3-c, the "2% real property tax levy cap", as predicted by Governor Cuomo, appears to have lead to greater "discipline, a rigor and a scrutiny to the process...it challenges the local governments to find savings. It informs the citizens and its working".[1] The response of the State's local taxing authorities has generally been supportive. For example, "a vast majority of school districts—642 of 678, or about 95%—stayed within the tax cap in 2012".[2]

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Reactions To Tax Cap Levy

While most tax authorities have been compliant there have been reactions and criticisms.[3] First, the New York State United Teachers union filed a lawsuit on February 20, 2013 challenging the constitutionality of the tax cap levy asserting "that the tax cap interferes with local control of school and that a requirement that 60% of voters support any override of the limit dilutes the voting power of those who favor exceeding the cap".[4] The union also asserts that the tax cap levy violates "the guarantee of equal protection under the law" since it "has a disproportionate effect on school districts in law-income areas".[5]

Interest In Reassessment

Second, there has been a renewed interest by local taxing authorities to cyclically reassess all properties.[6] In fact, the State actively encourages and provides aid to municipalities seeking to reassess at 100% of market rate.[7] ("To encourage compliance with State Law, New York State provides State Aid to municipalities that reassess at 100% of market value on a cyclical basis...Aside from State Aid, the benefits... include Assessment Equity for Taxpayers, Improved Bond Ratings, Few Court Challenges to Assessments, Increased State Land Assessments and Transparency").[8]

Home Inspections Sought

Third, there has been increased pressure on local tax assessors to find new sources of revenue. This has manifested itself in (1) demanding interior inspections of residential property, (2) selective reassessment and (3) challenging existing real property tax exemptions. All of these techniques have been examined and rejected by the Courts.

For example, assessors would like to inspect the interior of the premises to search for improvements that would support a reassessment. In *Matter of Aylward v. City of Buffalo*,[9] the petitioners commenced RPTL article 7 proceedings seeking review of their residential real property tax assessments. At trial, the assessor sought to inspect the premises in order to justify the assessments. The trial court erred, however, in shifting the burden to taxpayers to seek preclusion of such an inspection. In reversing, the Fourth Department found that the trial court should not have placed the burden on the petitioner to move to preclude inspection, rather than requiring the assessor to justify the inspection. In addition, the Court noted that where an assessor seeks an inspection of a premises, for which a tax challenge has been brought, the court must conduct a Fourth Amendment analysis which balances the assessor's need for an interior inspection against the invasion of petitioner's privacy interest that such an inspection would entail.

This finding comports with an earlier Second Department decision in *Matter of Yee v. Town of Orangetown*,[10] wherein three homeowners challenged their real property tax assessment in a SCAR proceeding. At the pretrial conference the town requested that its representatives be permitted to inspect the homes of the petitioners. After the petitioners refused to permit the inspections the JHO dismissed the SCAR peti-

tions, with prejudice, holding that, when a homeowner files a SCAR petition, that homeowner makes a limited and revocable waiver of a right to privacy and consents to inspection and, upon a demand for an inspection by the Town, must comply to avoid dismissal of the proceeding. The Second Department reversed holding, *inter alia,* that the JHO's determination to require an inspection without the homeowners' permission violated Fourth Amendment principles and the petitioners' rights against unreasonable search and seizure, noting that "except in certain carefully defined classes of cases, a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant."

Selective Reassessment[11]

The selective reassessment of real property is expressly prohibited in the Second Department.[12] The general rule is that in the absence of a municipality-wide re-assessment an assessor is required to provide an explanation of both the change in assessment on a particular piece of property and the assessment methodology.[13] Based upon observations of work being done on a house from outside the assessor changed the assessment from $32,900 in 2002 to $103,700 in 2003.[14] The trial court found selective reassessment, in that while explaining her reasoning "namely that there were improvements, she wholly failed to justify those changes, as required (and) do not appear...to have been based on objective data...she appears to have consulted no manuals, tables or any other authorities on costing".[15]

Challenging Tax Exemptions

Some assessors in their search for increased assessments have put pressure on tax exempt properties to annually justify their tax exempt status. In *Matter of 471 Columbian Club of Port Jervis, N.Y. Inc.*[16] the petitioner was granted a tax exemption in 2010 as a charitable organization pursuant to Real Property Tax Law § 420. Thereafter the Assessor requested that the petitioner submit an application for the same exemption in 2011. After the petitioner refused to make application, the Assessor removed the tax exemption for 2011 which was affirmed by the trial court. In reversing the trial court the Second Department noted that "'When a municipality withdraws a tax exemption which has been granted pursuant to RPTL § 420-a(1), it bears the burden of demonstrating that the property is no longer entitled to the exemption' and held that "a corporation is not required to complete or file any prescribed application forms to be entitled to an exemption pursuant to RPTL § 420-a".

Cooperative or Homeowners Association

In *Matter of W.O.R.C. Realty Corp. v. Board of Assessors*[17] petitioner, a not-for-profit corporation, held title to the subject property, some 239 acres of land with 283 seasonal cottages along with other improvements (including a marina) on behalf of the West Oak Recreation Club and the Club's 283 members, for the purpose of providing recreational facilities for its members. The Club members each own one of the 283 cottages on the property, but retain only a leasehold interest in the land upon which

each cottage is situated. The cottages are purchased and sold only to Club members, or to those who successfully apply for Club membership. The Club collects dues from the members for providing staff, common maintenance, and amenities on the premises, and fees for the use of the boat slips at the marina, and the petitioner pays the real property taxes from collected membership dues. At trial, the court found that the petitioner's ownership of the property was more like cooperative ownership than a homeowners' association, and that it must be valued like other cooperatives as a rental apartment complex according to RPTL § 581. On appeal, the Second Department agreed that the operation of the property was more similar to that of a cooperative than a homeowners association and found that the subject was over-assessed.

Condemnation: Value of Railroad Corridor

In *New York Central Lines, LLC v. State of New York*,[18] a case of first impression,[19] claimant, a railroad line, filed a claim relating to a part permanent fee, part permanent easement, taking by the State of New York to expand the Brooklyn-Queens Expressway. At trial, claimant's expert, supported by several scholarly articles on rail corridor valuation, sought to value the taking by utilizing comparable sales to arrive at a corridor value for the property which not only valued the "across-the-fence" value of the parcel but also the value of the corridor itself. The Trial Court accepted the use of a market analysis but rejected the proposed corridor valuation, and awarded $12,104,106 in damages. The Second Department held, *inter alia*, that the trial court's rejection of the corridor valuation concept was not supported by the evidence or adequately explained and remitted for, *inter alia*, a determination of the proper corridor valuation.

Condemnation: Bad Faith

In *Matter of Zutt v. State*,[20] the Second Department considered the circumstances under which a finding of bad faith on the part of a comdemnor would be appropriate. For more than a decade the homeowners, the Zutts, litigated with the State to prevent the use of their property for the draining of stormwater. The Zutts won every time collecting damages for trespass and obtaining injunctive relief. In 2010, the State invoked its powers of eminent domain and sought to condemn a portion of the Zutts' property for a drainage easement "we conclude that the State has acted in bad faith... (by) violating the sprit and letter of the EDPL in making an unfounded determination of the de minimus taking, thereby avoiding the required hearing, where the Zutts would have had the opportunity to present evidence of bad faith in a public forum (and) the State failed to conduct any SEQRA review. . .hastily prepared a superficial environmental checklist only after faced with new litigation. . .and proffered a baseless interpretation of its regulations".[21]

Procedural Issues

In *Matter of Board of Mgrs. of Century Condominium v. Board of Assessors*,[22] petitioner, a condominium manager, commenced RPTL Article 7 challenges to the assess-

ment for its condominium complex for several tax years. However, several of the petitions failed to identify all of the condominium units in the complex; petitioner sought leave to amend the defective petitions, which motion was granted, and respondent appeared. The Court held that amendment was proper, where petitioner had, previously, correctly challenged assessment of all of the condominium units before Board of Assessment review, and in tax petitions for the same property for other tax years, but had inadvertently failed to challenge all of the same units in its RPTL Article 7 petitions for two of the tax years. Respondents would not be prejudiced by the amendment; in fact, their appraisal had appraised the property in its entirety.

In *Matter of Ontario Square v. Assessor, Town of Farmington*,[23] petitioner filed an RPTL Article 7 petition to challenge the real property tax assessment of the parcel at issue, but failed to timely serve the petition upon respondents. Respondents moved to dismiss, and petitioner responded by seeking additional time to serve. The trial court granted the motion and the Fourth Department affirmed, finding that dismissal for failure of petitioner to timely serve under CPLR 306-b was appropriate. While RPTL §§ 704 and 708 set forth the general requirements for service and filing of a petition, they fail to specify the time for service of the petition upon the respondent, requiring reference to CPLR § 306-b. The latter section requires service within 15 days after the expiration of the applicable statute of limitations, in any special proceeding wherein the statute of limitations is less than four months. Here, pursuant to RPTL § 702, petitioner was required to commence the action by filing his petition within 30 days after the filing and completion of the assessment roll. Pursuant to CPLR 306-b then, he had 15 days thereafter to serve the petition upon the respondent. The trial court also properly held that the proper remedy for failure to timely serve was to move (or in this case, to cross-move), for an extension of time to serve.

Evidentiary Issues

In *Matter of Joy Builders, Inc. v. Conklin*,[24] petitioner brought an RPTL Article 7 petition to challenge the tax assessment on a parcel. Upon petitioner's motion to dismiss, the trial court denied the motion and, after searching the record, granted summary judgment to the respondent. The appellate court agreed, summary judgment was properly denied on petitioner's motion for summary judgment, due to the failure of petitioner to meet its initial burden of demonstrating that the assessment was improper. Further, the trial court properly searched the record to grant summary judgment to respondent, where respondent's moving papers showed conclusively that petitioner was unable to establish that the subject property, based on its use on the tax status date, was overvalued.

In *Matter of Rite Aid Corp. v. Otis*,[25] petitioner is the lessee retail pharmacy. Previously, a developer had built the nearly 14,000 square foot building on the property, and had sold the property in 2005 to an investor for approximately $3.6 million. Petitioner subsequently brought RPTL Article 7 petitions to challenge the $3.95 million assessment for tax years 2008, 2009 and 2010. At trial, the parties stipulated that they would limit their proof to the 2008 proceeding and that the determined valua-

tion would govern the 2009 and 2010 tax year proceedings. Supreme Court credited petitioner's expert appraisal proof, rather than the 2005 sale, and granted the petitions. Respondents appealed. The Court held that the trial determination of value was against the weight of the evidence, where it credited petitioner's appraisal over an arm's length sale of recent vintage of the subject, such sales being the best evidence of value.

In *Matter of Thomas v. Davis,*[26] petitioners commenced RPTL Article 7 proceedings to challenge the assessments of their mobile home park for several tax years. At trial, the court found that, although petitioners did demonstrate the existence of a valid and credible dispute regarding valuation of the multi-parcel property at issue, they nonetheless failed to meet their burden at trial. Petitioner appealed, and the Court affirmed. Petitioners' appraiser, it found, had employed both a market and an income approach, and arrived at reconciled values separate from those disclosed in the two methods, but he was unable to explain at trial how his reconciled values were arrived at. The Trial Court thus found that petitioners' appraiser violated Rule of Court 202.59 (g) (2). The Court also found that the petitioners' appraiser had improperly rejected several recent parcel sales as best evidence of the value of those parcels. However, the Court also found that the trial court did err in failing to evaluate the entire record, namely the respondents' appraisals which constituted admissions against interest as to the values contained therein. The Court modified, reducing the assessments to the extent demonstrated at trial.

Exemptions: Procedural Issues

In *Matter of Foundation for Chapel of Sacred Mirrors, Ltd. v. Harkins,*[27] petitioner, a not-for-profit entity, following purchase of the subject property, timely applied for a real property tax exemption for tax year 2009. Upon denial of the application, and a denial of the challenge to the assessment, petitioner sought relief under CPLR Article 78, and also pursuant to RPTL Article 7 alleged the assessment was excessive. Respondent moved to dismiss the Article 78 action. The trial court transferred, pursuant to CPLR § 7804 (g), the matter to the Appellate Division, which held that "unlawful" assessments subject to challenge pursuant to RPTL § 706 (1), include, as here, an entry on the taxable portion of the assessment roll of the assessed valuation of real property, where the property is wholly exempt from taxation. While a taxpayer may only challenge an overassessment pursuant to RPTL Article 7, for the failure to grant an application for an exemption pursuant to RPTL § 420-a, an owner may seek judicial review pursuant to either RPTL Article 7 or CPLR Article 78.

In *Matter of Circulo Housing Development Fund Corp. v. Assessor of City of Long Beach,*[28] petitioner, a not-for-profit corporation, filed applications for real property tax exemptions for two subject parcels, which applications were denied. Petitioner then brought an Article 7 petition to challenge the denials, which petition was dismissed on motion of the respondent, the trial court finding that the entity was not the owner of the parcels and thus lacked standing to bring the Article 7 petition. On appeal, the Second Department noted that, while any person aggrieved by an assessment may file an Article 7 petition challenging said assessment, pursuant to RPTL Article 5 only

the owner of the property may file a complaint or grievance to gain an administrative review of the assessment. The taxpayer had demonstrated ownership of one of the parcels, and therefore that petition was improperly dismissed by the trial court. While the taxpayer had failed to show, in its pre-RPTL Article 7 administrative complaint, that it was the actual owner of the other property at issue, the trial court did err in dismissing that Article 7 petition as well, since the entity did demonstrate that it was an aggrieved party and thus had standing. Nevertheless, that petition must be dismissed, due to the taxpayer's failure to demonstrate that the owner duly pursued a timely administrative challenge to the assessment, said challenge being a precondition to an Article 7 proceeding.

In *Matter of Long Is. Community Fellowship v. Assessor of Town of Islip*,[29] petitioner timely filed an application with the local assessor seeking an exemption pursuant to RPTL § 420-a. Upon denial of that application, and the passage of the tax status date, petitioner filed an administrative challenge, asserting that it had actually intended to apply for an exemption pursuant to RPTL § 462 (the "parsonage" exemption), and included with its challenge an application for a parsonage exemption pursuant to RPTL § 462. The challenge was denied, and petitioner brought CPLR Article 78 and RPTL Article 7 petitions seeking relief. The trial court granted the Article 78 petition, finding that the municipality had violated the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). On appeal, the trial court was found to have erred in finding a RLUIPA violation, since the taxpayer had been held to the same standard (a timely filed application) as other, non-religious taxpayers. Further, pursuant to RPTL § 462, an exemption from real property taxation may be granted only upon a timely application (namely, before the taxable status date) by the owner of the property on a form prescribed or approved by the Commissioner of Taxation and Finance. Petitioner had failed in both respects.

In *Matter of Zen Ctr. of Syracuse, Inc. v. Gamage*,[30] petitioner, the not-for-profit owner of a residential and dining facility for students of Zen Buddhism and visiting clergy, brought an Article 78 action seeking a declaratory judgment that it was entitled to an exemption pursuant to RPTL § 420-a for said facility, which judgment was granted. Respondent appealed, asserting that petitioner had failed to duly apply for said exemption, and that petitioner had failed to bring an RPTL Article 7 action to challenge the assessment. The Fourth Department held that there is no requirement that an application be filed to obtain an RPTL § 420-a exemption; a property owner seeking an exemption pursuant to that section may challenge the assessment pursuant to CPLR Article 78. In addition, a property owner also may challenge the denial of a mandatory exemption, pursuant to RPTL § 420-a, by either an RPTL Article 7 action, or a CPLR Article 78 action. Here, petitioner had met its burden of establishing that the subject property was used exclusively in furtherance of its religious purpose.

Substantive Issues

In *Matter of Vassar Bros. Hosp. v. City of Poughkeepsie*,[31] petitioner not-for-profit hospital was the owner of a parcel containing an office building and a 699-car park-

ing garage. Petitioner leased the building and the parking garage to a private entity, with the entity in turn sub-leasing the building to private physicians, and operating the parking garage. 250 parking spaces in the garage were allocated for use of the tenants, sub-tenants, and their visitors, with the remaining (449) spaces allocated for hospital employees and patients; however, of the 250 spaces, only 40 were reserved exclusively for tenant and subtenant use, the remainder being available on a first-come, first-served basis. Subsequently the single building and garage parcel was divided by the municipality into two separate tax lots; while the building was fully assessed, the parking garage was accorded a full exemption. Petitioner challenged the assessment, and the valuation of the garage parcel, and moved for summary judgment; respondent cross-moved for summary judgment, seeking a determination that the garage was only partly exempt. The trial court granted the hospital's motion and denied the cross-motion. The Court, on appeal, held that property which is used principally or primarily for an exempt purpose is entitled to a full exemption, including those portions of the property that are put to uses which are reasonably incidental to, or in furtherance, of the tax exempt purpose. However, where portions of the property are not put to uses reasonably incidental to, or in furtherance of, the exempt purpose, only those portions of the property are taxable, and thus the property as a whole is only entitled to a partial exemption. Respondent, here seeking to revoke an exemption, had the burden to prove that the property is subject to taxation, which it met by showing that a portion of the parking garage parcel had been used by the private physician subtenants of the medical office building, which use of the garage is not reasonably incidental to, or in furtherance of, the exempt purpose of the hospital. Thus the garage was found only entitled to a partial exemption.[32]

In *Matter of Health Insurance Plan of Greater N.Y. v. Board of Assessors*,[33] in a previous proceeding, the petitioner, a not-for-profit operating as an Health Maintenance Organization (HMO), had been determined to be eligible for a real property tax exemption for a prior tax year. Petitioners applied for the exemption on identical grounds, which application was denied by the respondents. Petitioner's motion for summary judgment was granted on the subsequent tax years, and respondent appealed. The Court examined RPTL § 486-a, which provides for exemptions for HMOs, and determining that 'exclusive" use as required therein is the same as the "exclusive" use required under RPTL § 420-a, namely principal or primary use. Petitioner, on the motion, had made a prima facie demonstration of entitlement to judgment as a matter of law, and appellants failed to raise a triable issue of fact.

In *Matter of Ahavas Chaverim Gemilas Chesed, Inc. v. Town of Mamakating*,[34] taxpayer, a religious congregation seeking to operate a camp on several of improved parcels which it owned, sought a real property tax exemption pursuant to RPTL 420-a for those properties for several tax years, and brought CPLR Article 78 and RPTL Article 7 actions challenging the denials. Supreme Court granted summary judgment to respondents, and petitioner appealed. The Court held that a taxpayer seeking a review pursuant to RPTL Article 7 and CPLR Article 78, of the denial of an exemption application, bears the burden of proof as to whether it is entitled to the claimed

exemption. Since petitioner's applications failed to establish that the property would primarily be for a religious use, it was thus rational for respondent to have denied petitioner's applications for tax exemptions for the parcels for the 2009 tax year. The Court also noted the failure of petitioner, or the party hired to operate the prospective camp, to have obtained a special permit for the contemplated (camp) use. While the owner's failure to apply for a use permit cannot be made a prerequisite to a RPTL 420-a tax exemption, where the applicant is taking good faith steps to renovate a property for an intended exempt use, the actual use of a property in contravention of local laws can be a valid basis for denying an application for a tax exemption. Regarding the 2010 tax year, petitioner's application had the same deficiency of proof on the matter of primary religious use of the property. While property not ready for an intended religious use may also be exempt prior to the use, to demonstrate that improvements (towards the use) are in "good faith contemplated", within the meaning of RPTL 420-a, an applicant seeking an exemption must have concrete and definite plans for utilizing and adopting the property for exempt purposes within the reasonably foreseeable future. Here, there was a definite failure of proof of such plans. In addition, a contemplated secondary use of property for non-religious purposes will not defeat an application for a tax exemption, but only if such non-religious use is reasonably incident to the petitioner's charitable aims. Here, petitioner failed to demonstrate how the proposed hotel use was related to its religious purposes. Thus denial of petitioner's 2010 application was also proper.[35]

In *Matter of Hudson Prop. Owners' Coalition, Inc. v. Slocum*,[36] petitioner, a not-for-profit association of homeowners, and individual homeowners, brought CPLR Article 78 action against respondent assessor, alleging that tax roll was illegal since it was not assessed at a uniform percentage of value. The petition was dismissed by the trial court for failure to state a cause of action. The Third Department affirmed, finding that, where the petition merely asserted that the Assessor had performed a revaluation (or reassessment) that changed the assessments of approximately 90% of all real property located in the municipality from those in the prior tax year's tax roll, without substantial evidence of overvaluation as related to individual properties, such as a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser, the petitioner was defective.

In *Matter of Paws Unlimited Foundation, Inc. v. Maloney*[37] petitioner, a not-for-profit animal welfare organization which ran a shelter on the subject premises, sought an exemption pursuant to RPTL § 420-a for the shelter and a fee based kennel which would also be operated on the property. Upon denial of the application, petitioner brought a challenge pursuant to CPLR Article 78, and moved for summary judgment, which motion was granted. The Court affirmed, finding that entities may receive an RPTL 420-a(1)(a) tax exemption where the entity is organized exclusively for the purposes enumerated in that section; the property is used primarily for the furtherance of such purposes; no pecuniary profit, apart from reasonable compensation, inures to the benefit of any officer, member, or employee of the entity, and the use is not a guise for profit-making operations. The mere charging of a fee for use of a premises, it held,

will not defeat such a tax exemption, if the fee is "reasonably incident to" the entity's charitable aims (the operation of an animal shelter.)[38]

ENDNOTES

1. "Cuomo defends 'rigor' of tax-levy cap; few towns plan to override it" at www.lohud.com (Nov. 7, 2011).
2. Kaplan, Teachers' Union Sues Over State's Tax Cap, www.nytimes.com (2/20/2013)("Today we fund education at more than a billion dollars less than we did in 2008").
3. *See* Wilkes, *Calculating New York's Two-Percent Tax Cap*, http://www.nypropertytaxmonitor.com/2012/06/29/new-yorks-tax-cap-a-real-brain-teaser/

   ("The greatest source of confusion among most New York State taxpayers is the suggestion that with the tax cap one year's tax bill should never be more than two-percent higher than the year before. This is hardly true. Rather, the cap limit refers to the total tax levy (or budget) for the municipality or school, after application of a complex formula").
4. Kaplan, *Teachers' Union Sues Over State's Tax Cap*, www.nytimes.com (2/20/2013) "People have a right to go to court". Mr. Cuomo added. "God bless America. God bless our system. I think the property-tax cap has been one of the best things we've done for the State of New York").
5. *See Id.*
6. *See* Dickerson, *The Selective Reassessment of Real Property in New York State: Is Annual Reassessment The Solution?*, IAO Journal, Vol. 48, No. 1, January 2006, p. 4.
7. *See Aid for Cyclical Reassessments*, Office Of Real Property Tax Assessments, Publication 1028 (October 2012) at www.tax.ny.gov.
8. *See Id.*
9. *Matter of Aylward v. City of Buffalo*, 101 A.D.3d 1743 (4th Dep't. 2012).
10. *Matter of Yee v. Town of Orangetown*, 76 A.D.3d 104 (2d Dep't 2010).
11. Dickerson, *Real Property Selective Reassessment: Annual Method Best?*, New York Law Journal, January 5, 2006, p. 4, available at http://www.nycourts.gov/courts/9jd/TacCert_pdfs/SELECTIVEREASSESSMENT.pdf
12. *See* e.g., *Leone v. Town of Cornwall*, 24 Misc. 3d 1218(A)(N.Y. Sup. Ct., Orange Cnty. 2009), aff'd, 81 A.D. 3d 649 (2d Dep't 2011); *Bock v. Town/Village of Scarsdale*, 11 Misc. 3d 1052(A)(N.Y. Sup. Ct., Westchester Cnty. 2007); *Young v. Assessor of the Town of Bedford*, 9 Misc. 3d 1107(A) (N.Y. Sup. Ct., Westchester Cnty. 2005), aff'd, 37 A.D. 3d 729 (2d Dep't 2007), *Matter of Markim v. Assessor of the Town of Orangetown*, 9 Misc. 3d 1115(A)(N.Y. Sup. Ct., Rockland Cnty 2005), adhered to on rearg., 11 Misc. 3d 1063 (A) (N.Y. Sup. Ct., Rockland Cnty 2006)
13. *See* e.g., *Leone v. Town of Cornwall*, 24 Misc. 3d 1218(A)(N.Y. Sup. Ct., Orange Cnty. 2009); *Bock v. Town/Village of Scarsdale*, 11 Misc. 3d 1052(A)(N.Y. Sup. Ct., Westchester Cnty. 2007); *Young v. Assessor of the Town of Bedford*, 9 Misc. 3d 1107(A) (N.Y. Sup. Ct., Westchester Cnty. 2005), aff'd 37 A.D. 3d 729 (2d Dept. 2007), *Matter of Markim v. Assessor of the Town of Orangetown*, 9 Misc. 3d 1115(A)(N.Y. Sup. Ct., Rockland Cnty 2005).
14. *See Id.*
15. *See Id.*
16. *Matter of 471 Columbian Club of Port Jervis, N.Y., Inc. v. Duryea*, 104 A.D. 3d 944 (2d Dep't 2013).
17. *W.O.R.C. Realty Corp. v. Board of Assessors*, 100 A.D.3d 75 (2d Dep't 2012), lv to appeal denied, 20 N.Y. 3d 862 (2013).
18. *New York Central Lines, LLC v. State of New York*, 101 A.D. 3d 966 (2d Dep't 2012).
19. *See* Goldstein & Rikon, "Corridor Valuation in Railroad Land Condemnation", New York Law

Journal, February 26, 2013 p. 4 ("you cannot find a reported case in New York on how just compensation is determined where railroad lands had been condemned. That is until the recent case of N.Y. *Central Lines v. State of N.Y.*").

20. *Matter of Zutt v. State*, 99 A.D. 3d 85 (2d Dep't 2012).
21. *See Id.* at 105-6
22. *Matter of Board of Mgrs. of Century Condominium v. Board of Assessors*, 96 A.D.3d 739 (2d Dep't 2012).
23. *Matter of Ontario Square Realty Corp. v. Assessor, Town of Farmington*, 100 A.D. 3d 1469 (4th Dep't 2012).
24. *Matter of Joy Builders, Inc. v. Conklin*, 96 A.D.3d 939 (2d Dep't 2012).
25. *Matter of Rite Aid Corp. v. Otis*, 102 A.D.3d 124 (3d Dep't 2012), lv. to appeal denied, 21 N.Y. 3d 855 (2013).
26. *Matter of Thomas v. Davis*, 96 A.D.3d 1412 (4th Dep't 2012), lv. To appeal denied, 21 N.Y. 3d 860 (2013).
27. *Matter of Foundation for Chapel of Sacred Mirrors, Ltd. v. Harkins*, 98 A.D.3d 1044 (2d Dep't 2012).
28. *Matter of Circulo Housing Development Fund Corp. v. Assessor of City of Long Beach*, 96 A.D.3d 1053 (2d Dep't 2012).
29. *Matter of Long Island Community Fellowship v. Assessor of Town of Islip*, 95 A.D.3d 1128 (2d Dep't 2012).
30. *Matter of Zen Ctr. of Syracuse, Inc. v. Gamage*, 94 A.D.3d 1490 (4th Dep't 2012).
31. *Matter of Vassar Bros. Hosp. v. City of Poughkeepsie*, 97 A.D.3d 756 (2d Dep't 2012).
32. *See Id.*
33. *Matter of Health Ins. Plan of Greater N.Y. v. Board of Assessors*, 93 A.D.3d 795 (2d Dep't 2012).
34. *Matter of Ahavas Chaverim Gemilas Chesed, Inc. v. Town of Mamakating*, 99 A.D.3d 1156 (3d Dep't 2012).
35. *See Id.*
36. *Matter of Hudson Property Owners' Coalition, Inc. v. Slocum*, 92 A.D.3d 1198 (3d Dep't 2012).
37. *Matter of Paws Unlimited Foundation, Inc. v. Maloney*, 91 A.D.3d 1173 (3d Dep't 2012).
38. *See Id.*