

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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In the Matter of the Application of the  
BAJ, LP, A DELAWARE LIMITED PARTNERSHIP,

**DECISION/  
ORDER/JUDGMENT**

Index Nos:

5257/02  
4938/03  
5049/04  
5057/05  
6007/06

Petitioner,

-against -

THE ASSESSOR OF THE TOWN OF GOSHEN, NEW YORK, THE BOARD OF ASSESSMENT REVIEW OF THE TOWN OF GOSHEN, NEW YORK AND THE TOWN OF GOSHEN, NEW YORK,

Respondents.

-----X  
**LaCAVA, J.**

The trial of this Tax Certiorari Real Property Tax Law (RPTL) Article 7 proceeding, challenging the valuation by the Town of Goshen (Town or Respondent) of the real property owned by BAJ, LP (BAJ or Petitioner), took place before the Court on April 30, May 1, May 2, May 15, and May 17, 2007. The following items numbered 1 to 12 were considered in connection with the trial of this matter:

<u>PAPERS</u>	<u>NUMBERED</u>
PETITIONER'S PRE-TRIAL MEMORANDUM	1
RESPONDENT'S PRE-TRIAL MEMORANDUM	2
STERLING APPRAISAL	3
APPRAISAL REPORT	4
PETITIONER'S POST-TRIAL MEMORANDUM	5
RESPONDENTS POST-TRIAL MEMORANDUM	6

Based upon the credible evidence and trial exhibits adduced at the trial, and upon consideration of the arguments of respective counsel and the post trial submissions, the Court makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

The instant property is owned in fee by BAJ, having acquired title from Good Time Park Associates approximately 20 years ago. It is known and designated on the Official Tax Map of the Village and Town of Goshen as Section 115, Block 1, Lot 5, and is on Route 207 near its intersection with Routes 17M and Route 17.

The property has been described as a rectangularly shaped, 97 acre parcel. Pursuant to a State condemnation taking (in the 1994-1998 period), the parcel was split in its southerly portion by Route 17M and Interchange 24 of Route 17. The portion of the parcel lying north of the split consists of some 86 acres, zoned approximately half residentially and half commercially. Wetlands inhabit over 13 acres of the residential portion, and comprise over 32 acres of the commercial area. The remainder of the northern parcel, consisting of almost 30 residential acres and nearly 11 commercial acres, is developable. The area located south of the split comprises approximately 10 acres. The Southern portion, which in its entirety is zoned commercial, includes 6 acres designated as wetlands, with the remaining 4 acres deemed developable.

As early as 1992, BAJ, although in Chapter 11 Bankruptcy, made a proposal to the Village of Goshen Planning Board (the Village) for the residential development of 142 townhouse units on the parcel. The Village took lead agency status for the SEQRA proceedings which were to follow, and by October 1992 a positive declaration was issued. At that time, however, the Village adopted a moratorium on development which lasted until 1995; in July of the latter year, BAJ submitted a Draft Environmental Impact Statement (DEIS), which the Village accepted two months later. BAJ accepted the responsibility of drafting a final Environmental Impact Statement (EIS). Over the next several years, the above-mentioned State taking proceeded, as did litigation between BAJ and the Village on several other issues, and mediation on the pending Bankruptcy case, and, in March 2000, BAJ submitted a final EIS.

Between late 2000 and 2004, the Planning Board and other agencies demanded additional information, and BAJ was eventually required to submit a re-design of the site plan. In January 2004,

the Board accepted the final EIS. The following month the Board also issued its SEQRA findings, and subsequently the Town issued a site plan and conditional use permit for 116 townhouse units. In addition, the New York State Department of Environmental Conservation has acknowledged receipt of an application for the construction of a 115 (*sic*) unit town home community.

Petitioner has filed timely challenges to the assessments, and therefore the taxes levied, on the instant property<sup>1</sup>.

#### THE TESTIMONY

At the trial of this matter, petitioners presented testimony from their appraiser, Bob Sterling, who testified that, due to the uncertain development potential of land such as the subject property, namely a mixed residential/commercial parcel with significant wetlands and only partial approvals for development, the only proper method of valuation is by the sales comparison method. Mr. Sterling valued the property as it existed on each of the several taxable status dates herein, namely as a single 97 acre lot, zoned partly commercial and partly residential, which is split in one portion by a road, which also contains a significant amount of wetlands, and which lies in a flood plain. His comparable properties consisted of four large lots with similar physical conditions (particularly wet lands), and being similarly zoned (although, in the case of one of the properties, Sterling was required to adjust for the fact that it did not have both zoning designations). Sterling noted, however, that, due to wetlands and buffer-zone consideration, it was unlikely that the commercial portion of the subject parcel would add any value to the parcel.

In particular, Sterling utilized as his first comparable sale, a parcel in the Town of Wallkill, which comprised 145.9 acres of vacant land, containing large areas of wetlands in a portion of the property, and which was zoned partly commercial and partly residential. The purchase price of this parcel was \$750,000, or \$5,141 per acre, with no approvals on the property. After adjustments for, *inter alia*, market conditions based on the date of sale, he determined the indicated price for this sale to be \$6,037 per acre for the 2002 valuation date; \$6,393 per acre for the 2003 valuation date; \$6,746 per acre for the January 1, 2004 valuation

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<sup>1</sup>Respondent moved to dismiss the Petition for Tax Year 2002, asserting lack of service upon the Orange County Commissioner of Finance, the Goshen Central School District, and the Clerk of the Village of Goshen. An examination of the records of the Clerk of the Court, Orange County, indicates that the timely-filed petitions were apparently properly filed and served, but were also apparently mis-filed by the clerk.

date; \$6,921 per acre for the July 1, 2004, valuation date; and \$7,274 per acre for the 2005 valuation date.

Petitioner's second comparable sale was also in the Town of Wallkill and consisted of 58.87 acres of vacant land, with no approvals, containing wetlands. The purchase price of this parcel was \$200,000, or \$3,397 per acre. After a similar market condition adjustment, as well as other adjustments, the indicated price for this sale is \$3,721 per acre for the 2002 valuation date; \$3,909 per acre for the 2003 valuation date; \$4,096 per acre for the January 1, 2004 valuation date; \$4,189 per acre for the July 1, 2004 valuation date; and \$4,375 per acre for the 2005 valuation date.

Petitioner's comparable sale number 3, also located in the Town of Wallkill, was comprised of 58.545 acres of vacant land, with no approvals, and had wetlands. The purchase price of this parcel was \$507,000, or \$8,660 per acre. After adjustments, the indicated price for this sale is \$6,226 per acre for the 2002 valuation date; \$6,596 per acre for the 2003 valuation date; \$6,964 per acre for the January 1, 2004 valuation date; \$7,146 per acre for the July 1, 2004 valuation date; and \$7,514 per acre for the 2005 valuation date.

Petitioner's final comparable sale, located in the Town of Chester, was a parcel consisting of 59.26 acres of vacant land, without approvals, containing wetlands. The purchase price for this parcel was \$375,000, or \$6,328 per acre. After adjustments, the indicated price for this comparable sale is \$7,867 per acre for the 2002 valuation date; \$8,305 per acre for the 2003 valuation date; \$8,740 per acre for the January 1, 2004 valuation date; \$8,955 per acre for the July 1, 2004 valuation date; and \$9,390 per acre for the July 1, 2005 valuation date.

As a result of his analysis of the afore-mentioned comparable land sales, as adjusted in each case, Sterling concluded as follows:

<u>Tax Year</u>	<u>Value Per Acre</u>	<u>Market Value</u>	<u>Assessment</u>
2002	\$6,000	\$580,000	\$493,000
2003	\$6,300	\$610,000	\$469,700
1/2004	\$6,600	\$640,000	\$422,400
7/2004	\$6,800	\$660,000	\$396,000 (2005)
2005	\$7,100	\$690,000	\$379,500 (2006)

As respondents properly point out, Sterling admitted that none of his comparables had municipal sewer and water available, unlike the subject property, and, indeed, all of respondent's comparable properties. Sterling also conceded that he did not consider the approval status of his comparable properties, nor did he value the subject property in light of that status, unlike the respondent's appraiser. He also valued the comparable properties, and the subject parcel, on a per acre basis, rather than per unit (as set forth in more detail below) as had respondent's appraiser.

Respondents presented the testimony of their appraiser, Gerald Griffin. Rather than value the parcel by acre, Griffin decided to value the land according to the number of units which it could support, reasoning that a builder would want to know the number of units rather than the acreage of the property. Griffin also believed in the value added to a parcel by municipal approvals, whether preliminary, conditional, or final, and valued the property in light of the approval status of the parcel. In addition, in seeking out comparable properties, Griffin sought properties that not only had preliminary and/or conditional approval, but also properties that had municipal sewer and water available. Finally, Griffin employed comparable properties that were either residentially or commercially zoned, but not both, applying those comparables to the similarly-zoned portions of the subject.

Respondent's Residential Sale #1 was a parcel in the Town of Wallkill, near Middletown, which consisted of 63.40 acres of vacant land, topographically undefined, which was adjacent to the Orange County Golf Club and had conditional final approvals for 217 units. The purchase price of this parcel was set by contract in 2002 (although it did not close until 2004) at \$4,063,000, or \$18,724 per unit, contingent on final approvals. After adjustments the indicated price for this sale remained at \$18,724 per unit for all of the valuation dates (to account, according to Griffin, for the upward movement of the market during the period at issue.)

Respondent's Residential Sale #2 was a parcel in the Town of Monroe, which consisted of 39.8 acres of moderately sloping vacant land, which was adjacent to and part of a larger parcel zoned for commercial and industrial use. The property had approvals for 198 townhouse-style units. The purchase price for this sale in 2003 was \$5,800,000, or \$29,293 per unit. After adjustments for size and location, the indicated price for this sale was \$25,485 per unit for all of the valuation dates.

Respondent's Residential Sale #3 was a parcel in the Town of Wallkill, which consisted of 12.7 acres of vacant, generally level land, which had approvals for 24 condominium units. The purchase

price of this property was \$1,000,000 in 2005, or \$41,667 per unit. After size and location adjustments, the indicated price for this sale was \$37,500 per unit for the valuation dates at issue.

Respondent's Residential Sale #4 was a parcel in the Town of Cornwall which consisted of 3 level acres of land, which was adjacent to a major shopping center and had final approvals for 55 condominium units. The purchase price of this parcel in 2005 was \$2,100,000, or \$38,182 per unit; after adjustments for size and approvals the indicated price for this sale was \$26,727 per unit for the several valuation dates.

Respondent's Residential Sale #5 was also a parcel in the Town of Wallkill, consisting of 5.9 acres of vacant, moderately sloping land, which had approvals for 35 condominium units. The purchase price of this property was \$2,030,000 in 2005, or \$58,000 per unit. After size and approval adjustments, the indicated price for this sale was \$40,600 per unit for the valuation dates at issue.

Respondent's Residential Sale #6 was a parcel in the Town of Goshen consisting of 4.7 acres of generally level land, which had approvals for 48 senior condominium units. The purchase price of this parcel in 2007 (*i.e.* after the last status date herein, although the sale went to contract in 2005) was \$1,800,000, or \$37,500 per unit; after adjustments for size and location the indicated price for this sale was \$39,375 per unit for the several valuation dates.

As indicated previously, rather than choose mixed residential/commercial properties, Griffin elected to use comparable properties that were either residential, or commercial, but not both. Thus, following the above analysis, Griffin concluded that the value of the residential portions (only) of the subject property were:

<u>Tax Year</u>	<u>Value Per Unit</u>	<u>Units Approved</u>	<u>Market Value</u>
2002	\$22,000	115	\$2,530,000
2003	\$25,000	115	\$2,875,000
1/2004	\$28,000	115	\$3,220,000
7/2004	\$29,000	115	\$3,392,500
2005	\$32,000	115	\$3,680,000

Griffin then went on to value the commercial portion of the subject property.

Respondent's Commercial Sale #1 was a parcel in the Town of Wallkill, which consisted of 53.3 acres of gently rolling vacant land, in four contiguous parcels, which was zoned for commercial and industrial use. The purchase price of this parcel in 2003 was \$2,500,000, or \$48,077 per acre. After adjustments for location, topography, size, and shape, the indicated price for this sale was \$40,865 per acre for all of the valuation dates.

Respondent's Commercial Sale #2 was a parcel in the Town of Goshen, consisting of 5.8 acres of hilly vacant land, which was adjacent to Route 17 and zoned for industrial use. The purchase price for this sale in 2003 was \$1,200,000, or \$206,897 per acre. After adjustments for topography, size and shape, the indicated price for this sale was \$144,828 per acre for all of the valuation dates.

Respondent's Commercial Sale # 3 was also a parcel in the Town of Goshen, which consisted of 10.3 acres of vacant land, which was adjacent to, but slightly below, the grade of the Quickway, and was zoned for commercial use. The purchase price of this property was \$725,000 in 2004, or \$70,388 per acre. After shape and location adjustments, the indicated price for this sale was \$77,828 per acre for the valuation dates at issue.

Respondent's Commercial Sale #4 was a parcel in the City of Middletown, which consisted of 26.3 moderate to heavily sloping acres of land, which was adjacent to Route 17M, was bisected by a major power line, and was zoned for commercial uses. The purchase price of this parcel in 2005 was \$1,500,000, or \$57,034 per acre; after adjustments for size, the indicated price for this sale was \$62,738 per acre for the several valuation dates.

Respondent's Commercial Sale #5 was a parcel in the Town of Wallkill, consisting of 38.1 acres of vacant, moderately rolling land, which was zoned industrial. The purchase price of this property was \$1,250,000 in 2005, or \$32,808 per acre. After size, location, and shape adjustments, the indicated price for this sale was \$39,370 per acre for the valuation dates at issue.

Respondent's Commercial Sale #6, also in the Town of Wallkill, was a parcel located adjacent to Commercial Sale #5, which consisted of 46.1 acres of generally rolling land, and which was zoned residential. The purchase price of this parcel in 2005 was \$1,613,500, or \$37,500 per acre; after adjustments for size, shape, and location the indicated price for this sale was \$42,000 per acre for the several valuation dates.

Following the above analysis, Griffin concluded that the value of the commercial/industrial portions (only) of the subject property were

<u>Tax Year</u>	<u>Value Per Acre</u>	<u>Acres</u>	<u>Market Value</u>
2002	\$60,000	14.74	\$885,000
2003	\$62,000	14.74	\$914,500
1/2004	\$64,000	14.74	\$944,000
7/2004	\$66,000	14.74	\$973,500
2005	\$68,000	14.74	\$1,002,000

Combining the values of the residential and commercial/industrial portions of the subject property, Griffin arrived at a market value for the subject parcel for each of the tax years, as follows:

<u>Tax Year</u>	<u>Residential MV</u>	<u>Commercial MV</u>	<u>Total MV</u>
2002	\$2,530,000	\$885,000	\$3,415,000
2003	\$2,875,000	\$914,500	\$3,789,500
1/2004	\$3,220,000	\$944,000	\$4,164,000
7/2004	\$3,392,500	\$973,500	\$4,365,500
2005	\$3,680,000	\$1,002,000	\$4,682,000

Griffin conceded, as set forth previously, that he valued the subject parcel as if it had been granted final approvals for development. As petitioner properly notes, however, for two of the tax years at issue, 2002 and 2003, the subject parcel did not even have preliminary approval; for 2004 it had at best only preliminary approval (based on Board acceptance of the final EIS), and only for 2005 did it have conditional site plan approval. Petitioner also argues that Griffin erred in analyzing the subject property and his comparables, by units, rather than acres, since final approvals (and thus final unit approvals) had not been granted to the petitioners, and thus any unit count was, at best, speculative.

Petitioner also took issue with the comparable properties utilized by Griffin. As noted above, Griffin chose to value the subject by consideration, separately, of its residential and commercial characteristics; then by employing comparable properties that were either residential or commercial, but not both, arriving at a value for the residential and commercial portions of the subject parcel separately, and then combining the two values to arrive at a single value. Petitioner argues that Respondent's methodology of valuation of the subject property as separate parcels, with each use valuated separately, fails to value the parcel at its current use, which consists of a single property with

mixed residential and commercial uses.

Petitioner also noted the great disparity in the residential comparables used by Griffin, including several properties that were between 3 and 13 acres, which were vastly dissimilar from the 43.21 acre residential portion of the subject. Griffin also conceded that 52.18 acres of the subject parcel, some 54% of its 96.7 acres, consisted of designated wetlands, but declined to take those wetlands, or the required buffers surrounding them, into consideration in his valuation. Indeed, when reminded of the buffer requirements, Griffin admitted that he was no longer sure, due to the wetland and buffer requirements, that what he had previously contended was 10 acres of usable commercial land, north of the roadway, even existed,

### CONCLUSIONS OF LAW

#### THE PRESUMPTION OF VALIDITY

The Respondents argue that the Petitioner's valuation evidence failed to rebut the presumption of validity of the assessments in that the Petitioner's Appraisal was not based upon standard and accepted appraisal techniques and, therefore, did not meet the substantial evidence standard. A party seeking to overturn an assessment must first overcome this presumption of validity through the submission of substantial evidence [ See e.g., *Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack*, 92 N.Y.2d 179, 187 (1998) ( "In the context of tax assessment cases, the 'substantial evidence' standard merely requires that petitioner demonstrate the existence of a valid and credible dispute regarding valuation. The ultimate strength, credibility and persuasiveness are not germane during this threshold inquiry...a court should simply determine whether the documentary and testimonial evidence proffered by petitioner is based on 'sound theory and objective data' " ); see also *Matter of Niagara Mohawk Power Corp. v Assessor of the Town of Geddes*, 92 N.Y.2d 192, 196, (1998) ("In the context of a proceeding to challenge a tax assessment, substantial evidence proof requires a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser " ); 22 N.Y.C.R.R. 202.59(g) (2) ( appraisal reports utilized in tax assessment review proceedings " shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached " )]

#### A VALID DISPUTE EXISTS

This Court finds that the Petitioner has submitted substantial evidence based upon " sound theory and objective data " consisting of an Appraisal and the testimony of Appraiser Bob Sterling and has

demonstrated the existence of a valid dispute concerning the propriety of the assessments.

**THE CEILING AND THE FLOOR**

This Court finds that the **Ceiling**, based on the actual assessments set by the Respondent Assessor, and the corresponding market values, based on the conceded equalization rates, is as follows:

<u>Assessment Year</u>	<u>Assessment</u>	<u>Equ. Rate</u>	<u>Market Value</u>
2002	\$1,600,000	/ 85%	\$1,882,352
2003	\$1,600,000	/ 77%	\$2,077,922
2004	\$1,600,000	/ 66%	\$2,424.242
2005	\$1,600,000	/ 60%	\$2,666,666
2006	\$1,600,000	/ 55%	\$2,909,090

This Court also finds that the **Floor**, based on the petitioner's appraisal and the appraiser's trial testimony, and the corresponding market values, based on the conceded equalization rates, is as follows:

<u>Assessment Year</u>	<u>Market Value</u>	<u>Equ. Rate</u>	<u>Assessment</u>
2002	\$580,000	x 85%	\$493,000
2003	\$610,000	x 77%	\$469,700
2004	\$640,000	x 66%	\$422,400
2005	\$660,000	x 60%	\$396,000
2006	\$690,000	x 55%	\$379,500

**PETITIONER'S BURDEN OF PROOF**

Having met its initial burden, the Petitioner must prove, through a preponderance of the evidence, that the assessments are

excessive. As indicated above, Court has considered and evaluated the weight and credibility of the evidence, the arguments of respective counsel, and the submissions of the parties to determine whether the Petitioner has proven that the assessments are excessive.

#### METHODOLOGIES, COMPARABLES, VALUATIONS, AND REBUTTALS

Both parties concur that, as the subject parcel is unimproved property, the proper method of valuation is the Sales Comparison method. As an initial matter, the Court is compelled to reject petitioner's appraiser's methodology insofar as he fails to adjust his comparable sales for partial approvals. While petitioner engages in a lengthy argument that said approvals, whenever and wherever granted, are intangibles, and thus barred from *ad valorem* taxation by law (*cf.* RPTL § 300; see also NYS Const, Art XVI, § 3), it is a fact that such approvals unmistakably add value to (or, conversely, their absence subtracts value from) the value of a parcel. (*Cf.* The Appraisal of Real Estate, 12<sup>th</sup> ed., p 333-34.) Therefore, the Court has evaluated the subject parcel in light of the parcel's approval status.

It is noteworthy, however, and as set forth previously, that while Griffin valued the subject property as if it had full approval for all of the tax years at issue, regarding the first two tax years at issue, namely 2002 and 2003, in fact the subject parcel did not have even preliminary approval. In addition, as relates to tax year 2004, the property had only undergone acceptance by the Board of the final EIS. Thus, only for 2005 did it have approvals, and even then only conditional site plan approval.

Petitioner has also argued, on a related point, that in incorrectly treating the subject as fully approved, Griffin also erred in analyzing the subject property and comparable sales by housing units rather than in acres as petitioner did. Indeed, absent final approval, any attribution of a unit count to the subject would be, at best, speculative. The Court concurs, and rejects Griffin's methodology insofar as it sought to value the subject parcel in light of housing units attributable to the parcel.

The Court also recognizes that petitioners have argued that Griffin's appraisal should be stricken for another reason, namely his failure to appraise the parcel as is, in its current condition. Specifically, petitioners point out that, while Sterling sought comparables which, like the subject parcel, were zoned as a combination of residential and commercial and/or industrial properties, Griffin sought to compare two separate groups of properties to the subject, those which were residential only, and those that were commercial and/or industrial only. As petitioner

rightly notes, such comparables as offered by Griffin do not reflect the current status of the subject as a single, mixed-use parcel. Consequently, to that extent the Court rejects Griffin's methodology as well.

In addition, the Court notes that Griffin entirely declined to apply any date adjustments in his appraisal, or, in any way, to adjust his sale prices per each tax year for time, arguing that the prices established already reflect upward movement in the market over the time period involved. Additionally, the Court also recognizes that the adjustments applied by Griffin for location, topography, and size appear, upon analysis, to improperly reflect those comparables' relationship to the subject (for example, residential sales 2 and 3, with no wetlands, deemed topographically equal to the subject, which he conceded needed the importation of landfill to raise the level of construction), in the same manner as his adjustments failed to adequately reflect the approval status of these properties.

Finally, and similarly, Griffin's commercial comparables would have to be rejected by the Court in any event. As Griffin conceded in his testimony regarding the commercial portion of the subject, and when reminded of the well and required well buffer, he was unable to identify 10 acres of commercially zoned land which he had originally thought was present in the subject. Consequently, the Court credits and adopts Sterling's opinion that, due to the wetlands restrictions and buffer requirements, the commercial portion of the subject parcel (approximately 67 acres) adds very little to its value.

Having rejected Griffin's methodology in its entirety for these reasons, the starting point for the Court's valuation of the subject parcel, of which 52% is comprised of wetlands, and which includes steep slopes in a substantial additional portion, is thus Sterling's comparable properties. As set forth in his appraisal, Sterling provided four comparable sales--mixed residential and commercial/industrial parcels--with sales prices, per acre, of \$5,141, \$3,397, \$8,660, and \$ 6,328, respectively. Following a series of intangible adjustments, including one for market conditions to reflect the difference in time between the sale of the comparable and the several taxable status dates, Sterling then applied a number of physical adjustments to those prices.

As set forth previously, Sterling declined to adjust the comparables for approvals or lack of same (each column lists the adjustment therefore as "0.0%"), which methodology the Court has rejected. In order to account for the mixed state of approvals during the several tax years at issue, the Court elects to effect adjustments of -10%, -10%, -10%, -15%, and -25% for approvals, attributable to the three years when only draft EIS approval was present; the one year when only preliminary subdivision approval

was present; and the final year when only conditional final approval was present, respectively.

In addition, the Court notes that, relating to physical adjustments for "Topography/Wetlands/Flood Zone", Sterling employed adjustments for Comparable Sales #2 and 3 of -25% each. However, the description of those two properties by Sterling "gently sloping, has minor wetlands" and "gently sloping, has some wetlands", respectively, which descriptions are not so disparate from that of the subject parcel (i.e., the properties are in fact topographically more similar to the subject than such adjustment suggests) so as to merit an adjustment of -25% each for such features. The Court, in consequence, has elected to alter those adjustments, for Comparable Sales #2 and 3, to -10% each.

The cumulative effect of these two separate methodological changes is to increase the averages of the adjusted prices per acre for the comparable properties, for each of the tax years, to:

2002	\$7,035 per acre
2003	\$7,434 per acre
2004	\$7,861 per acre
2005	\$8,028 per acre
2006	\$8,425 per acre <sup>2</sup> .

These prices per acre per tax year yield the following Market Values for those years, for the 97.0 acres of the subject parcel:

<u>Assessment Year</u>	<u>Court's Derived Market Value</u>
2002	\$682,395
2003	\$721,122
2004	\$762,517
2005	\$778,668
2006	\$817,177

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<sup>2</sup>In effect, the Court thus credits Sterling's testimony to the extent that it was his opinion that his comparable property # 4, valued at \$ 6,596 per acre post adjustments for tax year 2002, was the property most similar to the subject parcel.

which values are well within the range of testimony. (See *Rose v. State*, 24 N.Y2d 80 [1969].)

**FINAL MARKET VALUES**

These calculations result in final values of:

<u>Assessment Year</u>	<u>Pet MV (Appr)</u>	<u>Court's Derived MV</u>	<u>Resp MV (AV)</u>
2002	\$580,000	<b>\$682,395</b>	\$1,882,352
2003	\$610,000	<b>\$721,122</b>	\$2,077,922
2004	\$640,000	<b>\$762,517</b>	\$2,424,242
2005	\$660,000	<b>\$778,668</b>	\$2,666,666
2006	\$690,000	<b>\$817,177</b>	\$2,909,090

and rounded final values of:

<u>Assessment Year</u>	<u>Court's Derived MV</u>
2002	\$682,000
2003	\$721,000
2004	\$763,000
2005	\$779,000
2006	\$817,000

**FINAL VALUE, ASSESSMENT, AND REFUND**

The indicated assessments, based on these assessed values, are:

<u>Assessment Year</u>	<u>Court's Derived MV</u>	<u>Eq Rate</u>	<u>Indicated Assessment</u>
2002	\$682,000	x 85%	\$579,700
2003	\$721,000	x 77%	\$555,170
2004	\$763,000	x 66%	\$503,580
2005	\$779,000	x 60%	\$467,400
2006	\$817,000	x 55%	\$449,350

This would result in a reduction in assessed value, for each of the tax years, of

<u>Assessment Year</u>	<u>Town Assessment</u>	<u>Ind. Assessment</u>	<u>Reduction</u>
2002	\$1,600,000	\$579,700	\$1,020,300
2003	\$1,600,000	\$555,170	\$1,044,830
2004	\$1,600,000	\$503,580	\$1,096,420
2005	\$1,600,000	<b>\$467,400</b>	<b>\$1,132,600</b>
2006	\$1,600,000	<b>\$449,350</b>	<b>\$1,150,650</b>

and a tax refund, where payments were already made based on such Town assessments.

#### CONCLUSION

The Petitions, with costs [ R.P.T.L. §722[1] ], are sustained to the extent indicated above, the assessment rolls are to be corrected accordingly, and any overpayments of taxes are to be refunded with interest.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Submit Judgement on notice.

Dated: White Plains, New York  
June 3, 2008

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HON. JOHN R. LaCAVA, J.S.C.

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