

# NEW YORK STATE TAX CERTIORARI AND CONDEMNATION

## LAW CASES 2007-2008

July 18, 2008

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By Thomas A. Dickerson<sup>1</sup>

Since our last article in 2007<sup>1</sup> much has transpired in the fields of tax certiorari, eminent domain and real property tax exemptions.

### The Court of Appeals

Recently, the Court of Appeals addressed all of these areas starting with Consolidated Edison Co. Of New York v. City of New York<sup>2</sup>, a tax certiorari case involving the valuation of the Arthur Kill electric generating station with both sides agreeing to use the pre-deregulation<sup>3</sup> " speciality " valuation methodology of

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<sup>1</sup>Thomas A. Dickerson is an Associate Justice of the Appellate Division, Second Department who formerly presided over the Tax Certiorari & Condemnation Law Part of the 9<sup>th</sup> Judicial District. Justice Dickerson is author of Class Actions: The Law of 50 States, Law Journal Press ( 2008 ), Travel Law, Law Journal Press ( 2008 ), Article 9 of Weinstein Korn & Miller New York Civil Practice CPLR, Lexis-Nexis [MB] 2007.

Reproduction-Cost-New-Less Depreciation [ RCNLD ]. In Consolidated the Court held that it was appropriate, under the circumstances of this case only<sup>4</sup>, to allow usage of functional obsolescence due to excess construction costs in the RCNLD method of valuation [ allowing its use " [m]ay...further the purpose of valuation proceedings to arrive at a fair and realistic appraisal of the value of the property " ]. In Pall Corp. V. Board of Assessors of the County of Nassau<sup>5</sup> and Steel Los III/Gaya Foods, Inc. v. Board of Assessors of the County of Nassau<sup>6</sup>, two taxpayers who had entered into PILOT [ payments in lieu of taxes ] agreements commenced tax certiorari proceedings obtaining substantial refunds from Nassau County the net effect being that two school districts faced substantial deficits. The Court held in both cases that the " no charge-back " provision of the Nassau County Administrative Code applied to the PILOT payments and the County must absorb the cost of any tax refund without burdening the school districts with a shortfall in their respective budgets. In an eminent domain matter, McCurdy v. State of New York<sup>7</sup>, the Court of Appeals sought to establish " the proper measure of damages when a condemnor takes a temporary easement that encumbers a vacant parcel's entire highway frontage ". Finding that the claimant failed to demonstrate " that ( he ) was, in fact, planning to sell or develop his property [ e.g., failure to apply for ' highway work permit to construct an

entrance connecting the parcel to the Montauk Highway ` ] " the Court remitted for further proceedings. And in three cases, Adult Home at Erie Station v. Assessor of City of Newburgh<sup>8</sup>, Regional Economic Community Action Program, Inc. v. Bernaski<sup>9</sup> and United Church Residences of Freedonia v. Newell<sup>10</sup>, the Court of Appeals reviewed applications for real property tax exemptions pursuant to RPTL 420-a. In granting a RPTL 420-a real property tax exemption the Court found in Adult Home that the " property is used to provide housing to poor people at below market rates. This is plainly a ` charitable ` purpose " and found in Regional that although the facility received market rents it was " engaged in social work, helping people, alcoholics, drug addicts and other afflicted members of society to become productive and useful citizens. This is undoubtedly a charitable activity ". And in United the Court held that it was error to determine " that petitioner's receipt of HUD subsidies, raising the rent received for their low-income housing units for the elderly to the equivalent of market rates, removed them from RPTL 420-a tax exemption " .

### **Other Courts**

In addition, the Appellate Divisions and numerous trial courts<sup>11</sup> also ruled on tax exemptions, tax certiorari issues

[ e.g., valuation, selective reassessment<sup>12</sup>, discovery<sup>13</sup> equalization rates<sup>14</sup>, standing<sup>15</sup>, proper service<sup>16</sup>, failure to specify return date<sup>17</sup>, collateral estoppel<sup>18</sup>, " station connection " exemption<sup>19</sup> ] and eminent domain issues [ e.g., valuation, a tidal wetlands taking without compensation<sup>20</sup>, annulling condemnation determinations<sup>21</sup>, restoring ten year old claims<sup>22</sup>, failing to select the proper valuation date<sup>23</sup>, waiver of dead end street limitation<sup>24</sup>, failure to timely exchange appraisals<sup>25</sup>, failure to timely file a proof of claim<sup>26</sup>, failure to give proper notice<sup>27</sup> and allow a pre-acquisition hearing<sup>28</sup>, awarding interest<sup>29</sup>, use of prior appraisals<sup>30</sup>, recovering expenses and attorneys fees<sup>31</sup> and writs of prohibition<sup>32</sup>.

### **Post-Kelo Decisions**

In two decisions the Second Department considered the impact of Kelo v. City of New London on local condemnation projects. In Matter of 49 WB, LLC v. Village of Haverstraw<sup>33</sup> the Court annulled a condemnation project concluding that the true reason for the Village's proposed condemnation of private property was to assist the developer of a geographically distinct, already-approved, and apparently desirable waterfront project in meeting its required obligations to provide affordable, private scattered-site housing and to reduce its costs in doing so. And in Matter of Aspen Creek

Estates, Ltd. v. Town of Brookhaven<sup>34</sup> the Court upheld the condemnation of a 39-acre parcel within the Town's Manorville Farmland Protection Area in order to prevent its development as a residential subdivision which served the public purpose of preserving the largest and most contiguous belt of productive agricultural land within the Town and the historic rural character of that portion of the Town. The Aspen Court also held that the condemnation was not a subterfuge to improperly confer benefits upon private persons.

### **Valuation**

The Courts have considered valuation issues in tax certiorari and eminent domain cases involving a golf course<sup>35</sup>, incompletely improved property<sup>36</sup>, newly created property<sup>37</sup>, trade fixtures<sup>38</sup>, farmland<sup>39</sup>, retail/office commercial property<sup>40</sup>, vacant unimproved land<sup>41</sup>, interconnected multi-story commercial buildings<sup>42</sup>, surface parking lot<sup>43</sup>, a flood plain<sup>44</sup>, non-operational steel petroleum storage tanks located on six acres of land<sup>45</sup>, 45 Tudor City Place [ cooperative corporation ]<sup>46</sup>, Trump Parc Condominium<sup>47</sup>, five condominium units [ garage, theater, retail and offices ] in 1540 Broadway in Manhattan<sup>48</sup>, waterfront property<sup>49</sup>, shopping centers<sup>50</sup>, a former site for the manufacture of ocean-going ships and cranes during World War II in need of

remediation<sup>51</sup>, electricity generating plants<sup>52</sup> and Eckerd retail drugs stores<sup>53</sup>.

### **Striking Appraisals**

There are four basic methodologies used to value real property i.e., income capitalization<sup>54</sup>, comparable sales, RCNLD<sup>55</sup> and recent sales price in an arm's length transaction. Some cases, however, may not get to a valuation analysis because the appraisal is stricken as in Johnson v. Kelly<sup>56</sup> since " petitioners' appraisal, rather than addressing the total acreage, only appraised the unimproved land portion of the property while ignoring the value of the improved acre and the improvements ", or as in Niagara Mohawk Power Corp. v. Town of Moreau Assessor<sup>57</sup> one party's appraisal is stricken and the other party's appraisal is disregarded because its " use of straight-line depreciation ( is ) unreliable " or partially stricken as in Central Hudson Gas & Electric Corp. v. Assessor of the Town of Newburgh<sup>58</sup>.

### **Income Approach**

In VGR Associates LLC v. Assessor of the Town of New Windsor<sup>59</sup>, a tax certiorari proceeding involving the value of an anchor store in a shopping center, the Court accepted the income

approach, rejected the respondents' " half-box theory " and the petitioner's " fictionalizing " of taxes, examined factors such as the selection of economic rents<sup>60</sup>, stepped-up rentals, tenant improvements, vacancy and collection losses and double counting management fees and chose a non-institutional capitalization rate. In affirming the Appellate Division noted that " Improvements made by the tenant are outside the rental payments ...( and ) do not contribute to the income the property is able to produce "<sup>61</sup>.

In Mill River Club v. Board of Assessors<sup>62</sup> the Court addressed the valuation of a not-for-profit country club golf course using the capitalization of income method [ " Because most golf courses are run by specialized companies under operating leases, the net income a course's owner is likely to derive corresponds to the rent a tenant-operator will be willing to pay, and that rent, in turn, depends on the revenue the golf course is likely to produce " ] and upheld, inter alia, the treatment of estimated market rent as triple net lease rather than gross lease thus declining " to add a tax factor to the capitalization rate "<sup>63</sup>.

In Prospect Owners Corp. V. Tax Commission of the City of New York<sup>64</sup>, a tax certiorari proceeding involving the value of 403 residential unit cooperative apartment complex, the Court accepted the income approach [ " Although the sales comparison

approach was also used by respondents ' as a check or test of reasonableness to confirm the income approach ' " ] noting that a cooperative building's " market value should be calculated as no more than if it were a rental building as required by law " <sup>65</sup>, rejected petitioner's view that " the assessed values should have been reduced by the estimated cost of replacing windows...and pipes " finding " that any future expenditure for windows and water pipes would be offset by future MCI rent increases " ).

The income approach was also used by the Courts in Mutual of America Life Ins. Co. v. Tax Commission<sup>66</sup>, Trump Parc Condominium v. Tax Commission<sup>67</sup>, De Laus v. State of New York<sup>68</sup>, Village of Port Chester v. Brody<sup>69</sup>, Eckerd Corp. v. Assessor of Town of Colonie<sup>70</sup>, Bertelsmann Property v. Tax Commission<sup>71</sup> and Molly, Inc. v. County of Onondaga<sup>72</sup>.

### **Sales Comparison Approach**

The use of comparable properties recently sold as a measure of value, subject to appropriate adjustments<sup>73</sup> is frequently used either as a primary valuation methodology or as a check to the income capitalization method<sup>74</sup>. The sales comparison methodology was used by the Courts in De Laus v. State of New York<sup>75</sup>, Eckerd Corp. v. Assessor of Town of Colonie<sup>76</sup>, City of New York [ Newtown Creek Water Pollution Control Plant ]<sup>77</sup>, Application of the

Village of Dobbs Ferry [ Stanley Avenue ]<sup>78</sup> and  
BAJ, LP v. Assessor of the Town of Goshen<sup>79</sup>.

### **Recent Arms Length Sale**

In Park Place Realty LLC v. Assessor of The Village of Bronxville<sup>80</sup>, a tax certiorari proceeding, the Court valued a " " One-story commercial building ( relying ) upon a recent sale price of \$1,325,000 as best evidence of value [ " Amongst the recognized valuation methods ` the best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy ` " ] finding the sale to be an arm's length transaction<sup>81</sup>.

In Eckerd Corp. v. Assessor of the City of Watervliet<sup>82</sup> the Court noted that the subject" national chain pharmacy store " was sold in an arm's length transaction for approximately \$4 million ( in 2001 and resold in 2003 ) in another arm's length transaction for \$4.85 million " and approved the Supreme Court's reliance " upon these recent sales as best evidence of value ".

And in CCM Associates of Clifton Park, LLC v. Board of Assessment Review<sup>83</sup> the Court in valuing a shopping center noted, inter alia, that petitioner's 2006 arm's length transaction in purchasing the shopping ? May well be ` the best evidence of value `".

## Remediation & Condemnation Blight

In Atkin v. Board of Assessors of Town of Greece<sup>84</sup> the owner of contaminated property once used to manufacture ocean-going ships and cranes during World War II and B-52 aircraft parts in the 1950s challenged the assessments thereon. The Court found that the total environmental remediation clean up costs exceeded the value of the subject parcel thus " fixing the assessments at Zero Dollars...for each of the subject years " .

In DeLaus v. State of New York<sup>85</sup>, an eminent domain proceeding, the Court valued a parcel upon which a Howard Johnson's restaurant was originally built. Citing City of Buffalo v. Clement Co.<sup>86</sup> the Court reduced the value because of condemnation blight<sup>87</sup> [ " the subject value was diminished by the cloud of condemnation from October 1, 1998 ( the date when a newspaper article...was published ) to the date of de jure taking...May 25, 2000 ( in ) the sum of \$558,300 " ] .

In Village of Spring Valley v. N.B.W. Enterprises, Ltd<sup>88</sup> the Court noted that although the subject property " suffered from deteriorating conditions...claimant failed to demonstrate any acts...undertaken by the Village which diminished the value of the property " .

## Tax Exemptions

The Courts granted tax exemptions to an HMO [ Health Insurance Plan of Greater New York v. Board of Assessors of Town of Babylon<sup>89</sup> ( RPTL 486-a; " property owned by a not-for-profit corporation operating as an HMO, subject to the provisions of Public Health Law article 44... was used exclusively for that purpose " )], synagogue and residence [ Sephardic Congregation of South Monsey v. Town of Ramapo<sup>90</sup>( RPTL 420-a; " notwithstanding that more than one-half of the premises is used by ( the ) Rabbi ... and his family for personal use, given the comprehensive nature of ( the Rabbi's ) duties for the Congregation, nearly all of which occur on the premises, the residential use of the subject property is necessary and reasonably incidental " )], pre-school Jewish day school and afternoon Hebrew school [ Ohr Menachem of Great Neck v. Board of Assessors<sup>91</sup>( RPTL 420-a; " rejection of the application did not have a rational basis and...( was ) arbitrary " )], a parsonage [ Faith Mission Christian Fellowship Church, Inc. v. Assessor of the Town of Clarkstown<sup>92</sup> ( RPTL 462; residence of officiating clergyman )], a proposed Westchester University [ Legion of Christ v. Town of Mount Pleasant<sup>93</sup> ( RPTL 420-a(1),(3); Legion of Christ proposes to build Westchester University )] and a cultural center

[ Otrada, Inc. v. Assessor, Town of Ramapo<sup>94</sup> ( RPTL 420-a; " purposes include the preservation of the language and cultural tradition of Americans of Russian origin...that the plaintiff derived rental income from residents is insufficient to defeat its tax-exempt status " )]. And the Courts denied tax exemptions to a Buddhist community [ World Buddhist Ch'An Jing Center, Inc. v. Schoeberl<sup>95</sup>( RPTL 420-a; " petitioner acquired a 102-acre parcel of land...which contains buildings and housing for its leader and approximately 25 monks, nuns and disciples " )], an apartment building [ TAP, Inc. v. Dimitriadis<sup>96</sup> ( RPTL 420-a; " The provision of housing to low-income persons may constitute a charitable activity...testimony that the rents charged for its apartments are capped, at least some apartments are rented at reduced rates and the rental income is less than could otherwise be realized and is insufficient to meet its expenses " )] and for a Rabbi's residence [ Congregation Or Yosef v. Town of Ramapo<sup>97</sup> ( RPTL 420-a; " The plaintiff renovated the property's upper level as a residence...for its Rabbi...his wife and their 10 children and applied to the Town for a building permit to renovate the property's basement into a Mikvah ( ritual bath ) and playroom. The permit application did not mention that the property was to be used in whole or in part as a synagogue or a religious school...the plaintiff's use of the premises in violation of the Town zoning law prohibited it from receiving a

property tax exemption " )].

#### **ENDNOTES**

1. Dickerson, State Tax Certiorari & Condemnation Law Cases: 2006, N.Y.L.J., February 28, 2007, p. 4. See also: Dickerson, Tax Certiorari & Condemnation Law in New York State's 9<sup>th</sup> Judicial District, paper prepared for the ABA/IFT Advanced Property Tax Seminar, New Orleans, March 8-9, 2007 available at [www.courts.state.ny.us/courts/9jd/TacCert\\_pdfs/ABA-IPT2007TAXPAPER.pdf](http://www.courts.state.ny.us/courts/9jd/TacCert_pdfs/ABA-IPT2007TAXPAPER.pdf) and Dickerson, The Selective Reassessment of Real Property in New York State, March 20, 2007 available at [www.courts.state.ny.us/courts/9jd/TacCert\\_pdfs/TAXCERTSELECTIVEREORPSART3-2007.pdf](http://www.courts.state.ny.us/courts/9jd/TacCert_pdfs/TAXCERTSELECTIVEREORPSART3-2007.pdf). The most comprehensive collection of New York State real property tax cases can be found in The Real Property Tax Administration Reporter, ORPS, Albany, N.Y. 12210-2714.

2. Consolidated Edison Co. of New York v. City of New York, 33 A.D. 3d 915, 823 N.Y.S. 2d 451 ( 2d Dept. 2006 ), aff'd 8 N.Y. 3d 591, 869 N.E. 2d 634, 838 N.Y.S. 2d 458 ( 2007 ).

3. For discussions of the valuation of electric generating plants in a post-deregulation environment see Astoria Gas Turbine Power LLC v. Tax Commission of the City of New York, 7 N.Y. 3d 451, 857 N.E. 2d 510, 824 N.Y.S. 2d 189 ( 2006 ); Matter of Erie Boulevard Hydropower L.P. v. Town of Ephratah, 9 A.D. 3d 540, 779 N.Y.S. 2d 634 ( 3d Dept. 2004 ); Orange & Rockland Utilities, Inc. v. Southern Energy Bowline, . LLC, 12 Misc. 3d 1194 ( West Sup. 2006 )( oil and gas fired ); Mirant New York, Inc. v. Town of Stony Point Assessor, 13 Misc. 3d 1204 ( West Sup. 2006 )( coal fired ).

4. See N. 4, supra, at 869 N.E. 2d 636 ( " we do not adopt a rule that functional obsolescence due to excess construction costs is an appropriate consideration in every tax assessment matter where RCNLD is the applicable method " ).

5. Pall Corp. v. Board of Assessors, 41 A.D. 3d 722 ( 2d Dept. 2007 ), aff'd 10 N.Y. 3d 445, 2008 WL 1817274 ( 2008 ).

6. Steel Los III/Goya Foods, Inc. v. Board of Assessors, 35 A.D. 3d 482 ( 2d Dept. 2006 ), aff'd 10 N.Y. 3d 445, 2008 WL 1817274 ( 2008 ).

7. McCurdy v. State of New York, 37 A.D. 3d 779 ( 2d Dept. 2007 ), mod'd 10 N.Y. 3d 234, 885 N.E. 2d 185 ( 2008 ).

8. Adult Home at Erie Station, Inc. v. Assessor of City of Newburgh, 36 A.D. 3d 699, 828 N.Y.S. 2d 459 ( 2d Dept. 2007 ), aff'd 10 N.Y. 3d 205, 886 N.E. 2d 137, 856 N.Y.S. 2d 515( 2008 ).

9. Regional Economic Community Action Program, Inc. v. Bernaski, 40 A.D. 3d 1000 ( 2d Dept. 2007 ), rev'd 10 N.Y. 3d 205, 886 N.E. 2d 137, 856 N.Y.S. 2d 515( 2008 ).

10. United Church Residences of Freedonia v. Newell, 43 A.D. 3d 1403 ( 4<sup>TH</sup> Dept. 2007 ), rev'd \_\_N.Y. 3d\_\_, 2008 WL 2519809 ( 2008 ).

11. For a history of tax certiorari cases in Nassau County see Transtechnology Corp. v. Board of Assessors, N.Y.L.J., July 15, 2008, p. 29 ( " In 1993 during the height of what could only be classified as a tax certiorari crisis in Nassau County " ); See also: Mitev, Tax Assessment Challenges Skyrocket in Nassau, N.Y.L.J., Oct. 2, 2007, p. 1.

12. Matter of Dale Joan Young v. Town of Bedford 37 A.D. 3d 729, ( 2d Dept. 2007 )( initial assessment of newly created property on vacant, unimproved land at market held not to be selective reassessment and noting that " Petitioner failed to submit any evidence demonstrating that the Town assessed newly-constructed property at a higher percentage of market value than existing property " ); In Matter of McCready v. The Assessor of the Town of Ossining, 41 A.D. 3d 851 ( 2d Dept. 2007 )( " Assessor's methodology for updating and correcting inventory data " on 10,000 tax parcels was neither " selective [n]or discriminatory reassessment " ); Brimberg v. Commissioner of Finance of City of New York, 49 A.D. 3d 298 ( 1<sup>st</sup> Dept. 2008 )( " Petitioner's challenges to the methodology employed by respondents in assessing renovated properties in tax class one are conclusory and based on speculation " ); Pacini v. Assessor of Town of Whitestown, 15 Misc. 3d 1117 (N.Y. Sup. 2007 )( " the Hearing Officer's decision...is not rational " ); Parisi v. Assessor of the Town of Southampton, 14 Misc. 3d 1220 ( Suffolk Sup. 2007 )( reassessment of residential properties without reassessing commercial properties the value of which remained stable had a rational basis citing Mundinger v. Assessor of City of Rye, 187 A.D. 2d 594 ( 2d Dept. 1990 )); Supreme Associates, LLC v. Suozzi, 16 Misc. 3d 1136 ( Nassau Sup. 2007 )( "... plaintiffs' allegations...have demonstrated that because of the restrictions contained in RPTL Article 18, their taxes have been calculated

using an arbitrary figure with no apparent rational basis " ); Carroll v. Assessor of the City of Rye, Index No: 16738/03, Decision, March 28, 2007 ( West. Sup. )( J. LaCava )( " While the Court holds herein that the City indeed may properly reassess newly-created or developed property by reference to market value, the precise manner in which the two reassessments occurred here is a matter suitable for resolution at trial " ).

For a discussion of real property selective reassessment see Dickerson, The Selective Reassessment Of Real Property In New York State, The Real Property Tax Administration Reporter, New York State Office of Real Property Services, Vol. 15, pp. 186-203( June 2007 ). Also at [http://www.nycourts.gov/courts/9jd/TacCert\\_pdfs/SELECTIVEREASSESSMENT.pdf](http://www.nycourts.gov/courts/9jd/TacCert_pdfs/SELECTIVEREASSESSMENT.pdf)

13. JB Park Place Realty, LLC v. Village of Bronxville, 50 A.D. 3d 689 ( 2d Dept. 2008 )( Respondents failed to " provide an evidentiary basis for their contention that discovery or the pre-trial procedures outlined in 22 NYCRR 202.59 may lead to relevant evidence sufficient to raise a triable issue of fact " ); Gelber Enterprises, LLC v. Williams, 41 A.D. 3d 1207 ( 4<sup>th</sup> Dept. 2007 )( complaints filed with Board of Assessment Review dismissed for failure to provide " reasonable requests for information " ); Sterben v. Board of Assessment Review of Town of Amherst, 41 A.D. 3d 1214 ( 4<sup>th</sup> Dept. 2007 )( petition properly dismissed for failure to respond to Assessment Review Board's request for further documentation ); United States Postal Service v. The Assessor of the Town of Bedford, Index No: 14632/99, Decision March 26, 2008 ( West. Sup. )( J. LaCava )( motion to strike notes of issues for failure to provide discovery including income and expense statements in compliance with 22 NYCRR 202.59(b) denied ); Mandel v. Board of Assessors for the Town of Woodbury, Index No: 6169/06, Decision Sept. 5, 2007, ( West. Sup. )( J. LaCava )( documentary discovery and deposition of assessor granted ); State of New York v. Town of Haverstraw, Index No: 05357/05, Decision April 11, 2008 ( West. Sup. )( J. La Cava )( motion to dismiss petition for failure to comply with discovery requests before Town Board of Assessment Review pursuant to RPTL 525 denied );

14. See Town of Cortlandt v. New York State Board of Property Services, 36 A.D. 3d 823 ( 2d Dept. 2007 )( equalization rate to be recalculated and special franchise assessments to be recalculated as well ); Town of Huntington v. New York State

Board of Real Property Services, 33 A.D. 3d 619, 822 N.Y.S. 2d 152 ( 2006 )( methodology " in determining the special equalization rate was rational...and supported by substantial evidence " ).

15. See Brimberg v. Commissioner of Finance of City of New York, 49 A.D. 3d 298 ( 1<sup>st</sup> Dept. 2008 )( " Petitioner...lacks standing to challenge the methodology used to calculate class ratios " ); Greenburger v. Tax Commission of the City of New York, 16 Misc. 3d 1116 ( N.Y. Sup. 2007 )( fractional lessee [ 90% of space ] has standing to pursue tax assessment challenge where landlord " Yeshiva...is tax exempt ( and ) has no real pecuniary incentive to pursue its own tax assessment challenge "; Compare: Midway Shopping Center v. Town of Greenburgh, 11 Misc. 3d 1071 ( West. Sup. 2006 )( " Burlington as a fractional lessee [ 24.78 percent ] not responsible for the payment of any real property taxes...and having little, if any, pecuniary interest, never had any standing to file complaints..." )).

16. See Landesman v. Whitton, 46 A.D. 3d 827 ( 2d Dept. 2007 ) ( petitions dismissed for failure to serve Superintendent of Schools in violation of RPTL 708(3) ); Gatsby Industrial Real Estate. v. Fox, 45 A.D. 3d 1480 ( 4<sup>th</sup> Dept. 2007 )( petition dismissed for failure to mail copy of petition to Superintendent of Schools in violation of RPTL 708(3) ); MMI, LLC v. LaVancher, 45 A.D. 3d 1481 ( 4<sup>th</sup> Dept. 2007 )( petition dismissed for failure to mail a copy of petition to Superintendent of Schools in violation of RPTL 708(3)); Harris Bay Yacht Club, Inc. v. Town of Queensbury, 46 A.D. 3d 1304 ( 3d Dept. 2007 )( failure to mail petition to Superintendent of Schools; good cause shown pursuant to RPTL 708(3)); Country Estate Maintenance Co., Inc. v. Board of Education of Charlotte Valley Central School District, 34 A.D. 3d 1162 ( 3d Dept. 2006 )( " the matter must be remitted for a determination of whether petitioners complied with the statutory filing requirement or can show good cause for failure to comply " with RPTL 708(3)); Old Post Farm, Inc. v. White, Index No. 4178/07, Decision June 26, 2007 ( West. Sup. J. LaCava )( failure to properly serve Superintendent of Schools excused for good cause shown in absence of prejudice ).

17. See Allstate Equities, LLC v. Town of Newburgh, 43 A.D. 3d 1044 ( 2d Dept. 2007 )( Since RPTL 712[1] provides that, in a tax certiorari proceeding, a taxing municipality that fails to answer a petition is deemed to have denied all of the allegations therein, the petitioner's failure to include an exact return date on the notice of petition does not divest the Supreme Court of subject matter jurisdiction. At most, the failure to include an

exact return date in a tax certiorari petition is a mere irregularity, which should have been rectified in this case by granting the petitioner's cross motion to amend the petition to include an exact return date ). See also: Matter of Webb Properties, Inc. v. Town of Newburgh, 43 A.D. 3d 1070 ( 2d Dept. 2007 ).

18. See Frommer v. Board of Assessors, 40 A.D. 3d 637 ( 2d Dept. 2007 )( " The petitioners contend that the Supreme Court should have granted their motion for summary judgment invalidating the property tax assessments of the Village of Kings Point on certain real property...based upon the doctrine of collateral estoppel because a prior Supreme Court decision had invalidated Nassau County's assessments for those years and because the Village had elected to use the County tax roll as a basis for its own tax roll pursuant to ( RPTL ) 1402(2)... The Village, as an independent assessing unit, is entitled to a full and fair opportunity to provide support for and defend its own assessment "; motion denied ).

19. See Frontier Telephone of Rochester v. City of Rochester Assessor, 16 Misc. 471 ( Monroe Sup. 2007 )( intrabuilding network cable or wiring does not fall within the definition of " station connection " which is exempt from real property taxation pursuant to RPTL 102[12][d][I] ). Compare: Nextel of New York, Inc. v. Assessor of Village of Spring Valley, 4 Misc. 3d 233 ( West. Sup. 2004 )( cellular telephone antennae atop a privately owned water per a licensing agreement are taxable property pursuant to RPTL 102(12)(I) ).

20. See Friedenburg v. N.Y.S. Department of Environmental Conservation, 3 A.D. 3d 86 ( 2d Dept. 2003 )( tidal wetlands permit to construct a single family residence on waterfront property refused; " The petitioners have been left with a situation where their only viable choice is to leave the property in its natural state. The regulation has caused an almost total loss of the value of the property...the impact is so severe...it is clear that a taking has taken place " ).

21. See Serdaevic v. Town of Goshen, 39 A.D. 3d 552 ( 2d Dept. 2007 )( EDPL 207; condemnation determination annulled for failure to prepare and circulate proper " draft environmental impact statement in connection with proposed condemnation...for the purpose of a roadway drainage project " ); Butler v. Onondaga County Legislature, 39 A.D. 3d 1271 ( 4<sup>th</sup> Dept. 2007 )( EDPL 207; application to annul determination to condemn a .4 acre parcel

along Onondaga Creek shoreline denied as " petitioner has failed to ( prove ) that the determination is without foundation and baseless ( and ) that the taking is excessive " ).

22. Transtechnology Corp. v. Board of Assessors, N.Y.L.J., July 15, 2008, p. 29 ( " The present matter is part of what is likely the most onerous burden that the Court has been asked to shoulder in many years " ).

23. Friedenburg v. State of New York, \_\_A.D. 3d\_\_, 2008 WL 2522354 ( 2d Dept. 2008 )( value of acquired property as of the date the property vested in the State ).

24. Application of the Village of Dobbs Ferry [ Stanley Avenue ], Index No: 3660/00, Decision Nov. 8, 2007 (West. Sup. J. LaCava ).

25. See City of New York [ Great Atlantic Precast and Statuary, Inc. ], 18 Misc. 3d 945 ( Kings Sup. 2008 )( notwithstanding parties failure to comply with requirements for exchanging appraisal reports in 22 NYCRR 202.61[a][1] the Court stated that " in recognition of the constitutional mandate for just compensation, the parties...shall be directed to exchange appraisal reports " ).

26. Town of North Hempstead Community Development Agency [ Magnolia Avenue ], 19 Misc. 3d 1131 ( Nassau Sup. 2008 ) ( request to file untimely proof of claim granted since " a cursory reading of the preliminary appraisal report on which the advance payment was based that it may require adjustment " ).

27. See Brody v. Village of Port Chester, 509 F. Supp. 2d 269 ( S.D.N.Y. 2007 )( " Brody has met his burden to show a procedural due process violation on the part of the Village for a) lack of notice, both in form and in content, of the Village's publication of the Determination and Findings and b) lack of notice, in form, of the July 6, 1999 ' public use ' hearing " ).

28. See City of New York [ Jones Woods Park ], 14 Misc. 3d 258 ( Kings Sup. 2006 )( City exempt from EDPL article 2 hearing since proceedings pursuant to ULURP conducted on notice ).

29. See Battleboro Holding Corp. v. City of New York, 40 A.D. 3d 218 ( 1<sup>st</sup> Dept. 2007 )( " there is no authority to reduce the interest rates on the tax liens held by the lienor Trusts on the property from 18% to 6% " ); City of New York [ Powell's Cove Environmental Waterfront Park ], 17 Misc 3d 715 ( Kings Sup. 2007 )( " the payment of the condemnation award plus interest

into the Court will not serve to toll the accrual of interest pending a decision of the City's appeal of the final decree...6% per year, compounded annually " ); City of New York [ Crown Heights Urban Renewal Plan ], 16 Misc. 3d 1108 ( N.Y. Sup. 2007 )( " both mortgages should be paid interest at the rate of 6.25% prior to the date of vesting of title in the City " and 6% thereafter ); New York City School Construction Authority, 15 Misc. 3d 1123 ( Queens Sup. 2007 )( 6% interest; " Petitioner is also directed to pay claimants any interest that may have accrued on the sum due and owing since then. This payment is in addition to the interest accumulated on the excess funds...it held in escrow " ); City of New York [ Jones Woods ], 18 Misc. 3d 1111 ( Kings Sup. 2008 )( " while claimant is undeniably obligated to clear title objections, and will not be awarded interest for any delay in obtaining payment as a result of its failure to do so " ).

30. See City of New York [ Newtown Creek Water Pollution Control Plant ], 18 Misc. 3d 1118 ( Kings Sup. 2008 ) ( " either party is entitled to the production of a prior draft report prepared by an appraiser if the appraiser testifies at trial...City's refusal and/or inability to produce the raft reports ( requires ) an adverse inference " ); See also: Goldstein & Rikon, The Prior Appraisal, N.Y.L.J., April 27, 2007, p. 3.

31. See Hargett v. Town of Ticonderoga, 18 Misc. 3d 1138 ( Essex Sup. 2008 )( complaint seeking expenses and fees dismissed; " The Court is not satisfied that it has subject matter jurisdiction of this action as there was no underlying action in this Court in which to grant and award of expenses "; citing Matter of 49 WB LLC v. Village of Haverstraw ( 44 A.D. 3d 226 ( 2d Dept. 2007 ) ) " recovery of expenses under that statute was available only where the condemnor actually acquired title or was in the process of acquiring title by way of petition and acquisition maps " ). See also: Siegel & Fenchel, Reimbursement of Fees, Costs in Eminent Domain Cases, N.Y.L.J. June 5, 2007, p. 20.

32. See The Ray River Co v. Village of Haverstraw, Index No: 2074/07 Decision July 27, 2007 ( West Sup. )( J. LaCava )( motion for " a writ of prohibition barring condemnor from proceeding with its proposed acquisition...denied " ).

33. Matter of 49 WB, LLC v. Village of Haverstraw, 44 A.D. 3d 226 ( 2d Dept. 2007 ).

34. Matter of Aspen Creek Estates, Ltd. v. Town of Brookhaven, 47 A.D. 3d 267 ( 2d Dept. 2007 ).

35. Mill River Club v. Board of Assessors, 48 A.D. 3d 169 ( 2d Dept. 2007 ),

36. Town of East Hampton [ Windmill II Affordable Housing Project ], 44 A.D. 3d 963 ( 2d Dept. 2007 )( \$253,500 as just compensation approved ).

37. Matter of Dale Joan Young v. Town of Bedford 37 A.D. 3d 729, ( 2d Dept. 2007 )( initial assessment of newly created property on vacant, unimproved land at market held not to be selective reassessment and noting that " Petitioner failed to submit any evidence demonstrating that the Town assessed newly-constructed property at a higher percentage of market value than existing property " ); Carroll v. Assessor of the City of Rye, Index No: 16738/03, Decision, March 28, 2007 ( West. Sup. )( J. LaCava )( " While the Court holds herein that the City indeed may properly reassess newly-created or developed property by reference to market value, the precise manner in which the two reassessments occurred here is a matter suitable for resolution at trial " ).

38. See Application of USA Niagara Development Corp., 51 A.D. 3d 377 ( 4<sup>th</sup> Dept. 2008 )( trade fixtures not used at time of taking and not used for 11 ½ years " comprised mere ` noncompensable inutile capacity `"; " Settco had never conducted any trade of business in the building and no one had conducted business there in more than a decade " ); Village of Port Chester v. Megamat Laundromat, Inc., 42 A.D. 3d 465 ( 2d Dept. 2007 )( " The Court's total ( current sound value ) award...which was nearly twice the original cost to the claimant for constructing and equipping the entire laundromat in November 1997, constituted a windfall " ); City of New York [ Melrose Commons Urban Renewal Area ], 39 A.D. 3d 131 ( 1<sup>st</sup> Dept. 2007 )( compensable trade fixtures in woodworking business included large machines with dedicated electrical lines and arranged in a particular order to mirror the flow of work; handheld power tools not compensable ); G&T Restaurant Corp. Claimant in Application of Village of Port Chester, 19 Misc. 3d 1123 ( West. Sup. 2008 )( compensable items \$242,560.00 with interest from date of the taking ); City of New York [ West Bushwick Urban Renewal Area ], 18 Misc. 3d 1122 ( Kings Sup. 2008 )( lease reserves to landlord any condemnation award and terminates in the event of condemnation )].

39. See Johnson v. Kelly, 45 A.D. 3d 687 ( 2d Dept. 2007 )( 60 acres used for crop production; appraisal stricken ).

40. See JB Park Place Realty, LLC v. Village of Bronxville, 50 A.D. 3d 689 ( 2d Dept. 2008 )( one story commercial building ); DeLaus v. State of New York, 19 Misc. 3d 1133 ( Court Of Claims 2008 )( improved parcel with former Howard Johnson's Restaurant on it ); Mutual of America Life Ins. Co. v. Tax Commission, N.Y.L.J., Dec. 19, 2007, p. 29 ( N.Y. Sup. 2007 )( commercial rental office space ); Village of Spring Valley v. N.B.W. Enterprises, LTD, 19 Misc. 3d 1108 ( West. Sup. 2007 )( mixed commercial/office property ).

41. See BAJ, LP v. Assessor of the Town of Goshen, N.Y.L.J., June 1, 2008, p. 27, col. 3 ( West. Sup. 2008 )( 97 acre parcel, 86 acres zoned half residential and half commercial, wetlands inhabit 13 acres of residential portion and 32 acres of commercial portion ); Application of the Village of Dobbs Ferry [ Stanley Avenue ], Index No: 3660/00, Decision Nov. 8, 2007 (West. Sup. )( J. LaCava )( " These proposals included plans for 34 lots in Dobbs Ferry and 4 in Hasting and later plans showing 17 lots with a road going around a proposed ( DPW ) facility " ).

42. See Village of Port Chester v. Brody, 43 A.D. 3d 943 ( 2d Dept. 2007 ).

43. See Molly, Inc. v. County of Onondaga, 18 Misc. 3d 1126 ( N.Y. Sup. 2007 )( highest and best use as surface parking lot and fair market value of \$4,750,000 ).

44. See Kupiec v. State of New York, 45 A.D. 3d 1416 ( 4<sup>th</sup> Dept. 2007 )( "portion of claimant's property consisting of a flood plain would be capable of being developed only with the approval of the local zoning board, at excessive cost and effort. Claimant thus failed to establish that it was ' reasonably probable that the asserted highest and best use could or would have been made of the subject property in the near future ' " ).

45. See Application of the City of New York [ Newtown Creek Water Pollution Control Plant ], 18 Misc. 3d 1118 ( Kings Sup. 2008 ).

46. See Prospect Owners Corp. v. Tax Commission of City of New York, 12 Misc. 3d 1117 ( N.Y. Sup. 2006 ), aff'd 41 A.D. 3d 221 ( 1<sup>st</sup> Dept. 2007 ).

47. Trump Parc Condominium v. Tax Commission, N.Y.L.J., Dec. 4, 2007, p. 26, col. 3 ( N.Y. Sup. 2007 )( " The 38 story Building was built in the 1930's and was originally known as the Barbizon Plaza Hotel...Today, the Building consists of 340 residential condominium units and 76 storage units " ).

48. Bertelsman Property, Inc. v. Tax Commission of the City of New York, 17 Misc. 3d 1133 ( N.Y. Sup. 2007 )( 44 story mixed use building constructed in 1987 ).

49. Friedenburg v. State of New York, \_\_A.D. 3d\_\_, 2008 WL 2522354 ( 2d Dept. 2008 )( undeveloped waterfront property subject to Tidal Wetlands Act and New York State Department of Environmental Conservation " determined that almost all of the subject parcel should be designated as tidal wetlands " ).

50. CCM Associates of Clifton Park, LLC v. Board of Assessment Review, 49 A.D. 3d 941 ( 3d Dept. 2008 )( " six separately assessed parcels which comprised Clifton Park Center, a shopping center " ); VGR Associates, LLC v. Assessor of Town of New Windsor, \_\_A.D. 3d\_\_, 857 N.Y.S. 2d 666 ( 2d Dept. 2008 ) ( shopping center at which Price Chopper is the anchor tenant ).

51. Atkin v. Board of Assessors of the Town of Greece, 19 Misc. 3d 1125 ( Monroe Sup. 2007 )( also used for manufacture of B-52 aircraft parts and Talos ground handling equipment during the 1950s.

52. Niagara Mohawk Power Corp. v. Town of Moreau Assessor, 46 A.D. 3d 1147 ( 3d Dept. 2007 ); Central Hudson Gas & Electric Corp. v. Assessor of the Town of Newburgh, Index No: 4903/01, Decision Mar. 2, 2007 ( West. Sup. J. LaCava ).

53. Eckerd Corp. v. Assessor of the City of Watervliet, 44 A.D. 3d 1239 ( 3d Dept. 2007 )( tax years 2002, 2003, 2004 ); Eckerd Corp. v. Assessor of the Town of Colonie, 44 A.D. 3d 1232 ( 3d Dept. 2007 )( tax years 2004, 2005 ); Eckerd Corp. v. Assessor the of Town of Colonie, 35 A.D. 3d 931 ( 3d Dept. 2006 )( tax years 2002, 2003 ).

54. There are variations on the income capitalization approach such as the Discounted Cash Flow method [ DCF ]. See e.g., Application of the Village of Dobbs Ferry [ Stanley Avenue ], Index No: 3660/00, Decision Nov. 8, 2007 (West. Sup. J. LaCava ) ( DCF method based on estimated expenses faulty ); Orange & Rockland Utilities, Inc. v. Southern Energy Bowline,. LLC, 12 Misc. 3d 1194 ( West Sup. 2006 )]

55. See Ns. 2-4, supra.

56. Johnson v. Kelly, 45 A.D. 3d 687 ( 2d Dept. 2007 )( the aggrieved taxpayer must challenge the " total assessment and

[ was ] required to submit an appraisal that addressed the total assessment " or have its appraisal stricken ). Compare: SKM Enterprises Inc. v. Town of Monroe, N.Y.L.J., Mar. 24, 2004, p. 20, col. 1 ( West. Sup. 2004 )( petitioner's 1996 appraisal used to challenge 1997 assessment of burned down bowling alley stricken ).

57. Niagara Mohawk Power Corp. v. Rown of Moreau Assessor, 46 A.D. 3d 1147 ( 3d Dept. 2007 ).

58. Central Hudson Gas & Electric Corp. v. Assessor of the Town of Newburgh, Index No: 4903/01, Decision Mar. 2, 2007 ( West. Sup. J. LaCava )( Motion to partially strike appraisal granted " to the extent that the ceiling for valuation of the...parcels is presently determined to be the lesser of the values asserted by respondent in its trial appraisal for improvements alone...and the amount appearing on the final assessment role " )..

59. VGR Associates LLC v. Assessor of the Town of New Windsor, 13 Misc. 3d 1218 ( Orange Sup. 2006 ).

60. See Senpike Mall Company v. Town of New Hartford, 136 A.D. 2d 19, 23, 525 N.Y.S. 2d 104 ( 4<sup>th</sup> Dept. 1988 ).

61. VGR Associates LLC v. Assessor of the Town of New Windsor, \_\_A.D. 3d\_\_, 857 N.Y.S. 2d 666 ( 2d Dept. 2008 ).

62. Mill River Club v. Board of Assessors, \_\_A.D. 3d\_\_, 2007 WL 4463990 ( 2d Dept. 2007 ).

63. See e.g., Matter of Senpike Mall Co. V. Assessor of Town of New Hartford, 136 A.D. 3d 19, 525 N.Y.S. 2d 104 ( 4<sup>th</sup> Dept. 1988 ).

64. Prospect Owners Corp. V. Tax Commission of the City of New York, 12 Misc. 3d 1177 ( N.Y. Sup. 2006 ), aff'd 41 A.D. 3d 221 ( 1<sup>st</sup> Dept. 2007 ).

65. See e.g., In re River House-Bronxville v. Gallaway, 100 A.D. 2d 970 ( 2d Dept. 1984 ).

66. Mutual of America Life Ins. Co. v. Tax Commission, N.Y.L.J., Dec. 19, 2007, p. 29, col. 1 ( N.Y. Sup. )( " in determining a market rate of rent per square foot for office space in the subject building both parties consulted a wide range of comparable leases and the leases in the subject building

signed in the tax year at issue " ).

67. Trump Parc Condominium v. Tax Commission, N.Y.L.J., Dec. 5, 2007, p. 26, col. 3 ( N.Y. Sup. )( condominiums must be valued " as if it were a rental apartment building " ). See also: Siegel, Condominium Assessments, N.Y.L.J., December 4, 2007, p. 24.

68. De Laus v. State of New York, 19 Misc. 3d 1133 ( Ct. Cl. 2008 ).

69. Village of Port Chester v. Brody, 43 A.D. 3d 943 ( 2d Dept. 2007 ).

70. Eckerd Corp. v. Assessor of Town of Colonie, 35 A.D. 3d 931 ( 3d Dept. 2006 )( both appraisers used comparable leases to determine retail store's market rent ).

71. Bertselsmann Property v. Tax Commission, 17 Misc. 3d 1133 ( N.Y. Sup. 2007 )( both appraisers used " income capitalization approach...most appropriate for appraising an office building...seventy percent owner occupied " ).

72. Molly, Inc. v. Couty of Onondaga, 18 Misc 3d 1126 ( Onondaga Sup. 2007 )( highest and best use as surface parking lot; use of income and sales comparison approaches ).

73. See e.g., Village of Irvington v. Sokolik, 13 Misc. 3d 1220 ( West. Sup. 2006 )( adjustments regarding vacant land included steep slopes, Hudson River view, frontage, access, local use ordinances, need to obtain variances, utilities, size, zoning ).

74. Village of Spring Valley v. N.B.W. Enterprises, LTD, 19 Misc. 3d 1108 ( West. Sup. 2007 )( appraiser " tested the accuracy of his income capitalization conclusions by analysis of four comparable properties in a sales comparison approach " ).

75. De Laus v. State of New York, 19 Misc. 3d 1133 ( Ct. Cl. 2008 )( " four comparable sales of restaurants located in Greece, Penfield, Henrietta and Brighton " ).

76. Eckerd Corp. v. Assessor of Town of Colonie, 35 A.D. 3d 931 ( 3d Dept. 2006 )( " data from sales and leases of national pharmacy chain stores ( not useful ) because such ' build-to-suit

` properties typically have above-market leases which encompass land acquisition, demolition and construction costs that do not reflect the property's actual value " ).

77. City of New York [ Newtown Creek Water Pollution Control Plant ], 18 Misc. 3d 1118 ( Kings Sup. 2008 )( big box retail as highest and best use using comparable sales arriving at square footage values of \$39.78 versus \$24.00 plus consideration of demolition costs and costs of fill to raise the grade ).

78. Application of the Village of Dobbs Ferry [ Stanley Avenue ], Index No: 3660/00, Decision Nov. 8, 2007 (West. Sup. J. LaCava ).

79. BAJ, LP v. Assessor of the Town of Goshen, N.Y.L.J., June 1, 2008, p. 27, col. 3 ( West. Sup. 2008 )( " Both parties concur that as the subject parcel is unimproved property the proper method of valuation is the sales comparison method "; partial approvals add value; petitioner's appraiser failed to value property " as is " and declined to apply date adjustments ).

80. Park Place Realty LLC v. Assessor of The Village of Bronxville, 13 Misc. 3d 1233 ( West. Sup. 2006 ),aff'd 50 A.D. 3d 689 ( 2d Dept. 2008 ).

81. See e.g., Mirant New York, Inc. v. Town of Stony Point Assessor, 13 Misc. 3d 1204 ( Rockland Sup. 2006 )( " the Petitioners' purchase in July of 1999 of Bowline [ \$193,800,00 ] and :Lovett [ \$213,580,000 ] occurred within the context of arm's length transactions and is the best evidence of value for tax year 2000 " ); 325 Highland LLC v. Assessor of the City of Mount Vernon, 5 Misc. 3d 1018 ( West. Sup. 2004 )( " It is well settled that the purchase price set in the course of an arm's length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the highest rank to determine the true value of the property at that time " ).

82. Eckerd Corp. v. Assessor of the City of Watervliet, 44 A.D. 3d 1239 ( 3d Dept. 2007 ).

83. CCM Associates of Clifton Park, LLC v. Board of Assessment Review, 49 A.D. 3d 941 ( 3d Dept. 2008 ).

84. Atkin v. Board of Assessors of Town of Greece, 19 Misc. 3d 1125 ( Monroe Sup. 2007 ), aff'd 50 A.D. 3d 1496 ( 4<sup>th</sup> Dept. 2008 ). See also: D'Onofrio v. Village of Port Chester, 8 Misc. 3d 1015 ( West. Sup. 2005 )( motion in limine seeking `` an order to

exclude evidence at the trial of this action as to any diminution in the value of the condemned property by reason of the cleanup and remediation costs resulting from its alleged environment contamination "...with proviso that any condemnation award will be used to pay outstanding tax liens with the balance escrows pending the outcome of a separate proceeding to determine the condemnee's responsibility, if any, for the contamination remediation costs related to the subject property " ).

85. DeLaus v. State of New York, 19 Misc. 3d 1133 ( Ct. Cl. 2008 ).

86. City of Buffalo v. Clement Co., 34 A.D. 2d 24 ( 4<sup>th</sup> Dept. 1970 ), mod'd 28 N.Y. 2d 241 ( 1971 ).

87. See Rikon & Rikon, 'De Laus': Condemnation Blight and de Facto Takings, N.Y.L.J., June 25, 2008, p. 3 ( " The mere specter of a condemnation proceeding can have a significant impact on property values. This is because property owners are often unable to sell or lease property that may be affected by a condemnation proceeding; it also results from a reluctance to repair or invest in property that is likely to be acquired " ).

88. Village of Spring Valley v. N.B.W. Enterprises, LTD, 19 Misc. 3d 1108 ( West. Sup. 2007 )( mixed commercial/office property ).

89. Health Insurance Plan of Greater New York v. Board of Assessors of Town of Babylon, 44 A.D. 3d 1044 ( 2d Dept. 2007 ).

90. Sephardic Congregation of South Monsey v. Town of Ramapo, 47 A.D. 3d 915 ( 2d Dept. 2008 ).

91. Ohr Menachem of Great Neck v. Board of Assessors, 48 A.D. 3d 688 ( 2d Dept. 2008 ).

92. Faith Mission Christian Fellowship Church, Inc. v. Assessor of the Town of Clarkstown, Index No. 4774/04, Decision Sept. 25, 2007 ( West. Sup. J. LaCava ).

93. Legion of Christ v. Town of Mount Pleasant, Index No. 16649/04, Decision July 10, 2007 ( West. Sup. J. LaCava ).

94. Otrada, Inc. v. Assessor, Town of Ramapo, 41 A.D. 3d 678 ( 2d Dept. 2007 ).

95. World Buddhist Ch'An Jing Center, Inc. v. Schoeberl, 45 A.D. 3d 947 ( 3d Dept. 2007 ).

96. TAP, Inc. v. Dimitriadis, 49 A.D. 3d 947 ( 3d Dept. 2008 ).

97. Congregation Or Yosef v. Town of Ramapo, 48 A.D. 3d 731 ( 2d Dept. 2008 ).