

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

762

CA 15-00284

PRESENT: WHALEN, P.J., SMITH, NEMOYER, CURRAN, AND SCUDDER, JJ.

IN THE MATTER OF THE APPLICATION OF SHOPPINGTOWN
MALL NY LLC, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ASSESSOR, BOARD OF ASSESSORS AND BOARD OF
ASSESSMENT OF TOWN OF DEWITT AND TOWN OF DEWITT,
RESPONDENTS-RESPONDENTS.

JAMESVILLE DEWITT CENTRAL SCHOOL DISTRICT,
INTERVENOR-RESPONDENT.

CRONIN, CRONIN, HARRIS & O'BRIEN, P.C., UNIONDALE (RICHARD P. CRONIN
OF COUNSEL), FOR PETITIONER-APPELLANT.

CERIO LAW OFFICES, SYRACUSE (DAVID W. HERKALA OF COUNSEL), FOR
RESPONDENTS-RESPONDENTS.

BOND SCHOENECK & KING, PLLC, SYRACUSE (KATHLEEN M. BENNETT OF
COUNSEL), FOR INTERVENOR-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County
(Donald A. Greenwood, J.), entered December 10, 2014 in a proceeding
pursuant to RPTL article 7. The order, among other things, dismissed
the petition.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: On appeal from an order dismissing the petition in
this proceeding pursuant to RPTL article 7, petitioner contends that
it may challenge the assessment as unconstitutional under the
exception to RPTL 727 (1) set forth in *Susquehanna Dev. v Assessor of
City of Binghamton* (185 Misc 2d 267), and thus that Supreme Court
erred in granting the motion and cross motion to dismiss the petition
as barred by the statute. Petitioner raises that contention for the
first time on appeal, and it therefore is not properly before us (*cf.*
Matter of ELT Harriman, LLC v Assessor of Town of Woodbury, 128 AD3d
201, 206, *lv denied* 26 NY3d 918; *see generally Ciesinski v Town of
Aurora*, 202 AD2d 984, 985).

Entered: September 30, 2016

Frances E. Cafarell
Clerk of the Court