

COPY

At a Term of the Supreme Court of
the State of New York, held for the
County of Jefferson on October 2, 2008.

Present: Hon. Joseph D. McGuire, Justice

In The Matter of The Application for
a Declaratory Judgment, Review Under
Article 7 of the Real Property Tax Law of
Tax Assessments and Article 78 of the
Civil Practice Law and Rules by

MEMORANDUM/ORDER

THOUSAND ISLANDS PARK CORPORATION,
REV. JOHN D. ANDERSON, et al.

Plaintiffs-Petitioners,

Index No. 2008-2127

vs.

RJI No. 22-08-0601

DENISE J. TRUDELL, ASSESSOR FOR THE
TOWN OF ORLEANS, THE TOWN BOARD OF
THE TOWN OF ORLEANS, THE TOWN OF
ORLEANS, THE BOARD OF ASSESSMENT
REVIEW FOR THE TOWN OF ORLEANS,
COUNTY OF JEFFERSON and the
LAFARGEVILLE CENTRAL SCHOOL DISTRICT,

Defendants-Respondents.

Joseph D. McGuire, J.

One of the Plaintiffs-Petitioners is Thousand Islands Park Corporation ("TI Park"), a domestic corporation that owns a "resort complex" ("Park") that includes approximately 270 acres of land on an island in the St. Lawrence River, within the Town of Orleans ("Town")

and the Lafargeville Central School District ("School"). The Park contains over 300 seasonal cottages, as well as boathouses and docks, whose owners rent their land from TI Park pursuant to 99 year leases.

Plaintiffs-Petitioners also include approximately eighty-seven (87) individual owners of cottages, boathouses or docks within the Park. They claim that the Town has assigned and maintained a unique tax parcel identification number for each of the approximately 470 separate cottage, boathouse and dock parcels within the Park, and to the corporation, since the 1930's, and that these parcels were separately assessed to their owners, the individual leaseholders.

For tax year 2006-2007, the Town completed a town-wide revaluation and after unsuccessfully pursuing the local grievance and Board of Assessment Review (BAR) processes, an RPTL Article 7 and CPLR Article 78 proceeding was filed by the corporation and approximately 60 individual cottage, boathouse and dock owners for that year, as well as for the succeeding 2007-2008 tax year. Plaintiffs-Petitioners claim that on or about May 1, 2008 the Town Assessor sent correspondence to the Park to notify that it would no longer utilize separate tax parcel identification numbers, or complete individual tax assessments, for approximately 430 of the separate cottage, boathouse and dock parcels within the Park.

The result was a merger of the formerly individual tax parcels into

the Park parcel, although, of the individual Plaintiffs-Petitioners herein, approximately six individuals did not have their parcel merged into the Park. Plaintiffs-Petitioners claim that notices were not provided to the individual parcel owners whose tax parcel identification numbers were deleted and/or merged into the Park parcel. They further claim that the correspondence directed to the Park provided a list of values assigned to each of the deleted and/or merged parcels despite the fact that the Town purportedly was no longer treating them as separate parcels.

The corporate and individual Plaintiffs-Petitioners undertook grievances and BAR challenges, and ultimately commenced the underlying proceeding here, in pursuit of, *inter alia*, assessment reductions and to prevent the deletion of individual parcels from the tax roll, asserting eight causes of action. The Defendant Town assessor and various Town entities interposed an Answer and supporting documents, and the Defendant School interposed a separate Answer.

The Town moved on the return date of the Petition and Complaint for dismissal of the CPLR Article 78 claims, which are identified by the Town as the third, fourth and eighth causes of action. The Town claims that the Assessor's determination to delete the separate, individual tax parcel numbers was lawful and appropriate and that Plaintiffs-Petitioners are relegated to RPTL Article 7 as their exclusive remedy to

challenge their assessments.

The School cross moved on the return date of the Petition and Complaint for dismissal of the RPTL Article 7 claims asserted by certain Plaintiffs-Petitioners who the School alleges lack standing. Specifically, the School claims that the individual Plaintiffs-Petitioners are fractional lessees and, as such, cannot be "aggrieved" under RPTL Article 7. The practical result of such claim, if correct, would result in dismissal as to the individual Plaintiffs-Petitioners of the fourth, fifth and sixth causes of action relating to claims of illegal and unconstitutional assessment methods, unequal assessment and overvaluation. The School offers a copy of a standard Park lease in support of its argument that the individuals are not conferred the right to challenge tax assessments and, while obligated to pay any taxes or assessments attributable to any individual's parcel, are not obligated to pay the taxes directly to the levying municipality.

DISCUSSION

CPLR Article 78 Causes of Action:

The Respondent Town's contention that its decision to no longer separately assess the lots within the Park was appropriate and lawful under the Real Property Tax Law and decisional law is technically correct. It is true that an assessor cannot be forced to separately assess improvements to someone other than the owner of the land on

which the improvements are located, (*see Doughty v Loomis*, 9 AD2d 574 [3rd Dept 1959]), and that a structure built on one person's land but occupied by another cannot be assessed to the occupant of the structure (*see Haas v Bd. of Assessors of Town of Clayton*, 109 NYS2d 527 [Sup Ct, Jefferson County 1951]).

However, the present case is distinguishable from the cited cases on several grounds, including, but not limited to: the long standing, former practice of separately assessing the lots within the Park to the respective owners of the improvements/lessees; the former method of assessment resulted in assessing the improvement owners/lessees for both the value of the land and the improvements on their respective lots; the Town has determined to maintain separate assessments for some of the improvement owners/lessees; and it appears the Town must assess each lot and improvement separately in order to arrive at a total valuation for the Park.

A challenge to a real property assessment claiming the assessment is excessive or unequal or unlawful or that certain real property may be mis-classified (RPTL § 706) is generally asserted in a review proceeding under the Real Property Tax Law (RPTL Article 7). This is usually the exclusive remedy available to a taxpayer (RPTL § 700; *see Niagara Mohawk Power Corp. v City School Dist. of City of Troy*, 59 NY2d 262, 268 [1983]).

However, an Article 7 proceeding is not the exclusive manner of challenging a tax assessment, and such challenges using an Article 78 proceeding may go forward contemporaneously with an Article 7 action if there are certain jurisdictional or other predicates in issue (see, e.g., *Xerox Corp. v Town of Webster*, 204 AD2d 990 [4th Dept. 1994]). As cogently stated elsewhere, "... the CPLR Article 78 proceeding is appropriate where ... it is asserted that the method employed in the assessment involving several properties is unconstitutional..." (*Averbach v Bd. of Assessors of Town of Delhi*, 176 AD2d 1151, 1152 [3rd Dept 1991]).

It is the Court's duty to determine whether the claim of improper methodology is sufficient to permit relief under Article 78, or whether exclusive use of Real Property Tax Law Article 7 is appropriate (see *AES Somerset, LLC v Town of Somerset*, 24 AD3d 1263, [4th Dept. 2005]).

Where the assertions regarding methodology are conclusory and based solely on speculation, the sole remedy for alleged improper assessment is the Real Property Tax Law (see *Matter of Board of Mgrs. of Greens of N. Hills Condominium v Bd. of Assessors of County of Nassau*, 202 AD2d 417 [2nd Dept 1994], *lv denied* 83 NY2d 757; see also *Kahal Bnei Emunim & Talmud Torah Bnei Simon Israel v Town of*

Fallsburg, 78 NY2d 194 [1991]).

A review of the Petition and Complaint indicates there are allegations of improper methodology sufficient to state an Article 78 claim with regard to the Town's assessment of the Park. While such allegations are in part conclusory, the Court finds that the Town's change from its prior practice of assessing the improvement owners/lessees separately, to the new practice of assessing a total value to the Park, without notice to the affected taxpayers who previously had the right to grieve and challenge their assessments, is an action that may be challenged pursuant to Article 78. Accordingly, at this stage in the litigation the Court denies that part of the Town's motion for dismissal of those causes of action.

Standing of Individual Petitioners under RPTL Article 7:

The School correctly states the holding of the Court of Appeals with regard to fractional lessees lacking "...standing to maintain a tax certiorari proceeding unless the lease expressly confers the right to assert the lessor's undivided property interest in a challenge of the assessment, or unless the lessee is required to pay directly the taxes levied against the lessor's undivided parcel." *Matter of Waldbaum, Inc. v Finance Adm'r of City of N.Y.*, 74 NY2d 128, 132 [1989]. However, the Court is not constrained to blindly follow the *Waldbaum* holding

based on Defendants-Respondents contention that the fractional lessees in *Waldbaum* are analogous to the Park lessees herein.

It is the Court's view that the unique division of real property rights between the Park and its lessees presents factual distinctions between the *Waldbaum* lessees and the lessees of the Park that results in finding that the *Waldbaum* rule is either satisfied or not applicable to the individual Plaintiffs-Petitioners herein.

For instance, a typical Park lease requires the Lessee "to pay any and all taxes or assessments that may be assessed upon said lot by any county, township, or school district, ...". While the lease does not expressly confer to a lessee the Park's right to challenge an assessment, or require the lessee to pay the municipal taxing authority directly, it does not forbid direct payment. Nevertheless, it is clear that the lessee is responsible for every cent of real property taxes assessed upon the lessee's lot. This satisfies the rule that "the assessment must also have a direct adverse affect on the challenger's pecuniary interests" (*Matter of Waldbaum, Inc.*, 74 NY2d 128, 132) in order for a fractional lessee to have standing to maintain a tax certiorari proceeding. (See *Big "V" Supermarkets, Inc. v Assessor of the Town of E. Greenbush*, 114 AD2d 726 [3rd Dept 1985].)

Further, the Court of Appeals stated its determination of sound policy and determination in *Waldbaum* was "to avoid a fracturing of

challenges against an assessment; to prevent duplicative petitions, ...; to protect the taxing authority from multiple litigation **as to the same parcel** by parties of unknown relation to the taxed premises; and to ensure that the assessment consequences are proportionately spread among all entities having obligations flowing out of a divided assessment unit." (*Matter of Waldbaum, Inc.*, 74 NY2d 128, 134.) [Emphasis added; internal citations omitted]. There is no indication that any of these policy concerns will be violated or exacerbated by a determination that these Plaintiffs-Petitioners are aggrieved parties pursuant to RPTL Article 7.

In addition, there is the fact that the individual lot lessees have been assessed and billed separately and directly by the Town since at least the 1930's, as claimed by Plaintiffs-Petitioners, or since the 1960's, as claimed by Defendants-Respondents. Whether or not this has been a burden on the Town or preferential treatment conferred on the Park lessees, it appears that the Town continued to assign individualized assessments on each lot for the 2008-2009 tax year in order to arrive at a number for assessing the Park, as a whole, with the newly "merged" lot parcels. Where, as here, the individual Plaintiffs-Petitioners have previously had the right - for a period of approximately fifty or more years - to grieve and challenge the Town's tax assessments of each lot, and they were not provided with notice of the

Town's intent to delete and/or merge their individual tax parcel numbers with the Park, the Court is concerned that denying standing to Plaintiffs-Petitioners would result in a violation of basic concepts of due process, equity and fairness in this case and under the circumstances presented.

CONCLUSION

Accordingly, based upon the foregoing it is hereby

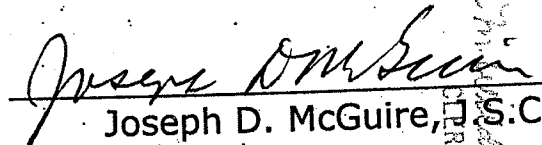
ORDERED, that the Defendant-Respondent Town's motion to dismiss Plaintiffs-Petitioners' third, fourth and eighth causes of action on the grounds that CPLR Article 78 relief is inappropriate is hereby Denied; and it is further

ORDERED, that the Defendant-Respondent School's Motion to dismiss as to the individual Plaintiffs-Petitioners' fourth, fifth and sixth causes of action on the basis of a lack of standing is hereby Denied; and it is further

The foregoing is the Memorandum and Order of the Court.

ENTER

Dated: December 31, 2008
Lowville, NY


Joseph D. McGuire, J.S.C.
CLERK

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The signing of this Memorandum/Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved of the applicable provisions of the rule with regard to filing, entry, and serving Notice of Entry of Order.

The Court has considered the following pursuant to CPLR 2219: Notice of Petition of Kathleen M. Bennett, Esq., dated July 30, 2008; Affirmation of Kathleen M. Bennett, Esq., with Exhibits A and B, dated July 30, 2008; Affidavit of Joseph Turri, with Exhibit A, dated July 30, 2008; Verified Petition and Complaint, dated July 30, 2008, with Exhibit A; Verified Answer of LaFargeville Central School District, dated September 17, 2008; Verified Answer of Denise J. Trudell, Assessor for the Town of Orleans, The Town Board of the Town of Orleans, The Town of Orleans, and The Board of Assessment Review for the Town of Orleans, dated September 25, 2008; Affidavit of Denise J. Trudell, with Exhibits A-D, dated September 25, 2008; Affidavit of Donna Chatterton, dated September 24, 2008; Affidavit of Robert Hotis, dated September 24, 2008; Affidavit of Ted Weisberg dated September 24, 2008; Affirmation of James A. Burrows, Esq., with Exhibit A, dated September 26, 2008; Memorandum of Law of James A. Burrows, Esq., dated September 26, 2008; Notice of Cross-Motion of LaFargeville Central School District, dated September 26, 2008; Affidavit of Joseph G. Shields, Esq., Attorney for LaFargeville Central School District, with Exhibit A, dated September 26, 2008; Affidavit of Susan Whitney, with Exhibit A, dated September 25, 2008; Memorandum of Law on Behalf of Respondent LaFargeville CSD, by Joseph G. Shields, Esq., dated September 26, 2008; Reply Memorandum of Law, by Kathleen M. Bennett, Esq., dated October 1, 2008.