

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

317

CA 08-01948

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, AND GORSKI, JJ.

IN THE MATTER OF ESTRELLITA LLC AND ST. LAWRENCE
GRANDE, INC., AND ALL OTHERS SIMILARLY SITUATED,
PETITIONERS-RESPONDENTS,

V

MEMORANDUM AND ORDER

TOWN BOARD OF TOWN OF ALEXANDRIA, TOWN OF
ALEXANDRIA, TOWN OF ALEXANDRIA BOARD OF
ASSESSMENT REVIEW, AND ASSESSOR OF TOWN OF
ALEXANDRIA, RESPONDENTS-APPELLANTS.

CONBOY, MCKAY, BACHMAN & KENDALL, LLP, WATERTOWN (STEPHEN W. GEBO OF
COUNSEL), FOR RESPONDENTS-APPELLANTS.

Appeal, by permission of a Justice of the Supreme Court,
Jefferson County (Joseph D. McGuire, J.), from an order entered
February 28, 2008 in a proceeding pursuant to CPLR article 78. The
order denied the motion of respondents to dismiss the petition.

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

Memorandum: Petitioners commenced this CPLR article 78
proceeding seeking, inter alia, to annul the tax assessment of their
properties in respondent Town of Alexandria. Respondents appeal from
an order denying their motion to dismiss the petition. We reject
respondents' contention that a CPLR article 78 proceeding is not an
appropriate procedural vehicle for challenging the tax assessments and
that RPTL article 7 is the exclusive procedural vehicle for such a
challenge. A challenge to an individual property tax assessment on
the ground that the assessment was illegal, excessive or unequal
should be brought in a certiorari proceeding under RPTL article 7.
Here, however, the challenge is to " 'the method employed in the
assessment of *several properties* rather than the overvaluation or
undervaluation of [a] specific propert[y]. . . , ' " and thus a
proceeding pursuant to CPLR article 78 is not inappropriate (*Matter of
Cayuga Grandview Beach Coop. Corp. v Town Bd. of Town of Springport*,
51 AD3d 1364, 1364, lv denied 11 NY3d 702; *Matter of Board of Mgrs. of
Greens of N. Hills Condominium v Board of Assessors of County of
Nassau*, 202 AD2d 417, 419, lv denied 83 NY2d 757; *Matter of Averbach v
Board of Assessors of Town of Delhi*, 176 AD2d 1151, 1152). Also
contrary to respondent's contention, the petition does not fail to
state a cause of action. Indeed, the petition sufficiently states "a
cause of action against respondents for purportedly utilizing an

unconstitutional reassessment methodology" (*Averbach*, 176 AD2d at 1153).

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court