

**Matter of Rite Aid Corp. v City of Troy Bd. of
Assessment Review**

2016 NY Slip Op 32955(U)

April 1, 2016

Supreme Court, Rensselaer County

Docket Number: 237216-11

Judge: Patrick J. McGrath

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term of the Rensselaer County Supreme Court, held in and for the County of Rensselaer, in the City of Troy, New York, on the 9th day of September 2015

PRESENT: HON. PATRICK J. McGRATH, JSC

STATE OF NEW YORK
SUPREME COURT

COUNTY OF RENSSELAER

Received
County Clerks Office
Apr 28, 2016 02:19P
Rensselaer County
Rink J Merola

In the Matter of the Application of
RITE AID CORPORATION,

Petitioner,

DECISION AND ORDER
INDEX NOS:
237216-11
240500-12
243898-13.

-against-

**CITY OF TROY BOARD OF ASSESSMENT REVIEW,
THE ASSESSOR OF THE CITY OF TROY, and
THE CITY OF TROY, RENSSELAER COUNTY, NEW YORK.**

Respondents.

For a Review of a Tax Assessment under
Article 7 of the Real Property Law.

Last Submission Received March 23, 2016

APPEARANCES: ROBERT L. JACOBSON, ESQ.
For the Petitioner

DANIEL G. VINCELETTE, ESQ.
Deputy Corporation Counsel
For the Respondents

McGRATH, PATRICK J., J.S.C.

Petitioner, a lessee under a 20-year lease of a free-standing build-to-suit retail pharmacy located at 272 Hoosick Road in the City of Troy, has commenced these proceedings pursuant to RPTL Article 7 to challenge the assessment imposed for each of the tax years 2011, 2012, and 2013. These proceedings were combined and the Court held a bench trial on June 11, 2014 and September 9, 2015. The Court heard the testimony of Petitioner's appraiser, Christopher Harland, and

Respondent's appraiser Stephen Clark, and admitted their respective appraisals into evidence. Petitioner and Respondents have submitted post trial Memorandums of Law.

The subject property was constructed in 2009, and consists of a 14,673 square foot retail pharmacy that was constructed on a 1.51 acre site at 272 Hoosick Street, Troy. The subject property is subject to a 20 year triple net lease, with four five-year renewal options. Under the terms of the lease, petitioner pays the owner of the property \$553,446 a year, or \$37.72 per square foot. On March 30, 2012, the subject property sold for \$6,360,000. Prior to the sale, the property was listed with a national brokerage company, and the sale was to a person not related to the original developer/owner. The RP-5217 does not indicate any unusual circumstances surrounding the sale. The Court finds that the sale was an arm's length transaction.

The City assessed the property as follows:

Year	Assessment	Full Market Value
2011	\$470,873	\$3,412,123
2012	\$470,873	\$3,363,379
2013	\$4,030,000	\$5,150,000

The Property is what is referred to as a "first generation" building meaning that it was built to suit for and occupied by the original tenant.

Both appraisers testified that they used the comparative sales approach and the income capitalization approach methods to calculate the values of the Property set forth in their respective appraisal reports. Neither used the cost approach method.

Mr. Harland concentrated his analysis on the fee simple value of the property, unencumbered by any leases. The comparable properties he used in his analysis consisted primarily of commercial retail properties located in the same general geographic area. None, however, were currently occupied by national pharmacy chains nor subject to build-to-suit leases. He appraised the property at \$1,860,000 for 2011, 2012, and 2013.

Mr. Clark used the sales of four free-standing "first generation" retail drug stores, "as they mirror the use, condition and ownership of the subject as of the taxable status date. The use of other random retail property types is an illogical methodology as it ignores extensive locations criteria needed for a successful drugstore business location." His analysis indicated a market value of \$4,850,000 in 2011; \$5,000,000 in 2012; and \$5,150,000 in 2013. Mr. Clark also considered the recent arms length sale of the property in 2012 for \$6,361,678 to conclude that the challenged assessments in these proceedings and the corresponding indicated market value are adequately supported.

The appraisers agree that the subject is encumbered with a substantially above market rent lease.

The Court finds that both parties presented qualified appraisers that are capable of rendering expert opinions and appraisal reports. However, for the reasons stated below, the Court finds Mr. Clark's opinion to be more credible.

Although a municipal tax assessment enjoys a presumption of validity, that presumption may be overcome by producing substantial evidence that [the] property has been overvalued - (Matter of NiagaraMohawk Power Corp. v. Assessor of Town of Geddes, 92 NY2d 192, 196 (1998); *see* Matter of Regency Realty Assoc., LLC v. Board of Assessment Review of the Town of Malta, 75 AD3d 950, 951 (3d Dept 2010); Matter of Rite Aid of NY No. 4928 v. Assessor of Town of Colonie, 58 AD3d 963, 964 (3d Dept 2009), lv denied 12 NY3d 709 (2009) - a burden often satisfied by the submission of a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser (Matter of NiagaraMohawk Power Corp. v. Assessor Town of Geddes, 92 NY2d at 196; *accord* Matter of PNL Stillwater LLC v. Board of Assessors of Town of Stillwater, 94 AD3d 1401, 1402 (3d Dept 2012); Matter of Regency Realty Assoc., LLC v. Board of Assessment Review of the Town of Malta, 75 AD3d at 951; *see* Matter of Corvetti v. Winchell, 75 AD3d 1013, 1014 (3d Dept 2010), lv denied 16 NY3d 701(2011). In a Decision and Order dated February 5, 2015, this Court determined that petitioner submitted substantial evidence based upon "sound theory and objective data" and had demonstrated the existence of a valid dispute concerning the propriety of the assessments.

As the presumption of validity has been rebutted, this Court must weight the entire record, including evidence of claimed deficiencies in the assessment, to determine whether [the] petitioner has established by a preponderance of the evidence that its property has been overvalued. Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack, 92 NY2d 179, 188 (1998); *accord* Matter of Rite Aid of NY No. 4928 v. Assessor of Town of Colonie, 58 AD3d at 964; *see* Matter of Corvetti v. Winchell, 75 AD3d at 1014.

There have been seven decisions from the Appellate Division, Third Department concerning stand-alone, national retail pharmacies with long-term leases (Matter of Eckerd Corp. v Burin; Matter of Rite Aid of N.Y. No. 4928 v Assessor of Town of Colonie; Matter of Brooks Drugs, Inc. v Board of Assessors of City of Schenectady; Matter of Eckerd Corp. v Gilchrist; Matter of Eckerd Corp. v Semon, 44 AD3d 1232; Matter of Eckerd Corp. v Semon, 35 AD3d 931; Matter of Rite Aid Corp. v. Otis, 102 AD3d 124), as well as a recent decision of this Court (Elliot, J.) (Matter of Rite Aid Corp. v. Town of Schodack Bd. of Assessment Review, 41 Misc. 3d 1221(A)). Those decisions and their outcomes were discussed at length in this Court's decision and order dated May 16, 2014 in connection with the parties cross motions for summary judgment, and that discussion is referenced and incorporated herein. Mr. Harland was the petitioner's appraiser in each of these cases, wherein he based the value of the property on a "fee simple" interest approach using market rent and market sales, as he has done in the instant matter. The Third Department has found his opinion to be "plausible" three times in recent years. However, the court has never sided with the respondent in

any case which involved recent sales of the property in issue. The assessor prevailed in the other four cases where the assessment was upheld based on a recent sale of the property in issue.

This Court concludes that petitioner has failed to establish by a preponderance of the evidence that its property has been overvalued, first, because Mr. Harland disregarded the recent arm's length sale of the property, which is the best evidence of its value. Matter of Rite Aid Corporation v. Otis, 102 AD3d 124 (3d Dept. 2012). Petitioner claims that *Otis, supra*, is distinguishable because in that case, the sale price was below both the assessed value and the value adopted by the town appraiser. In this case, the sale price exceeded both the assessed value and the value adopted by the town appraiser. In addition, the sale price of the instant property was around \$2 million more than three of Mr. Clark's sales comparables, however, it was fairly consistent with Sale 4, also located in Troy, which sold for \$6,175,000. Mr. Clark explained the differences in sale prices, noting that Sale 1 was in the Town of Kinderhook, with a smaller population of around 15,000. Mr. Clark stated that Sale 2 was in Catskill, which he stated was "not a hot bed of activity." With respect to Sale 3 in Wilton, he noted that the store was on Route 9, "the wrong street", and that it were on Route 50, it would have made "a world of difference." In his report, he stated that "Sales 1, 2 and 3 lack the superior, more densely populated urban environment of the subject property, necessitating positive adjustments." He noted that the subject property was in a dense location, close to RPI, apartment buildings, and Samaritan Hospital. The Court finds that respondent's expert has provided a sufficient explanation of the differences between the sale prices of those properties in Troy (subject and Sale 4), and those in other less densely populated areas.

In accordance with *Otis, supra*, a decision in this case to credit the appraisal offered by petitioner which completely disregarded the arm's length sale of the instant property would be "against the weight of the evidence." Matter of Rite Aid Corporation v. Otis, 102 AD3d at 127, comparing Matter of Rite Aid of N.Y. No. 4928 v Assessor of Town of Colonie, 58 AD3d at 966 [recent arm's length sale], Matter of Brooks Drugs, Inc. v Board of Assessors of City of Schenectady, 51 AD3d at 1095-1096 [same], and Matter of Eckerd Corp. v Gilchrist, 44 AD3d at 1240 [same], with Matter of Eckerd Corp. v Burin, 83 AD3d at 1242-1243 [no recent sale], Matter of Eckerd Corp. v Semon, 44 AD3d at 1234 [same], and Matter of Eckerd Corp. v Semon, 35 AD3d at 934 [same]. Although Mr. Clark did not base his opinion of value on the sale alone, it is nevertheless part of the record before the Court and is being used by the Court as some evidence in its determination that the Respondent's assessment is valid.

Additionally, the Court does not credit Mr. Harland's approach, which examines the fee simple value of the property, unencumbered by any leases. In Matter of Rite Aid Corp. v. Town of Schodack Bd. of Assessment Review, Justice Elliot found that the "guiding principle" in cases such as these is RPTL 302(1), which states in part: "The taxable status of real property in cities and towns shall be determined annually according to its *condition and ownership* as of the first day of March and the valuation thereof determined as of the applicable valuation date...." (Emphasis supplied). Further, that

"The [subject] Property is a 'first generation' free standing drug store encumbered with a

long term lease paying above market rents. This is the current condition of the Property, and it should be assessed as such. Its comparable properties are other 'first generation' free standing drug stores encumbered with a long term lease paying above market rents. Its comparable properties are not 'second generation' buildings paying market rents. If the property was to at some later date be occupied by a 'second generation' building paying market rents, then its condition would be different and a different assessed value would be warranted." Id at *9-10.

This Court agrees with Justice Elliot, as well as Mr. Clark, that the instant subject's "condition and ownership" as of the relevant dates was a first generation free standing drug store encumbered with a long term lease paying above market rents, and should be assessed as such. The Court disagrees with petitioner that this is an "overly restrictive" interpretation of RPTL 302. That the subject property could be used as any type of small retail store without major reconstruction ignores the reality of how it is being used, and that there is an established national submarket for the sale and purchase of built-to-suit net lease national chain drugstores. Petitioner's expert disregarded the applicable sub-market and relied upon properties that are clearly outside of the well-recognized parameters of the net lease national drugstore sub-market. See Matter of Rite Aid Corp. v Haywood, 130 AD3d 1510 (4th Dept. 2015).

For the foregoing reasons, the petitions challenging Respondents' 2011, 2012 and 2013 tax year assessments are hereby dismissed.

This shall constitute the Decision, Order and Judgment of the Court. This original Decision, Order and Judgment is returned to the attorneys for the Respondent. All other papers are delivered to the Supreme Court Clerk for transmission to the County Clerk. The signing of this Decision, Order and Judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule relating to filing, entry and notice of entry.

SO ORDERED AND ADJUDGED.

Dated: April 1, 2016
Troy, New York


PATRICK J. McGRATH
Supreme Court Justice

Received
County Clerks Office
Apr 28, 2016 02:19P
Rensselaer County
Frank J Merola