

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM**

-----X

Barbara Massaro,

Petitioner,

DECISION & ORDER

Index No. 500894/2018

-against-

Assessor of the Town of Carmel,

Respondent.

-----X

Joseph Massaro,

Petitioner,

Index No. 500899/2018

-against-

Assessor of the Town of Carmel,

Respondent.

-----X

Wright to Paradise LTD,

Petitioner,

Index No. 500903/2018

-against-

Assessor of the Town of Carmel,

Respondent.

-----X

GROSSMAN, J.S.C.

Petitioners in the above actions each move for a determination as to the timeliness of delivery of their respective Petitions to the Board of Assessment Review of the Town of Carmel.

In effect, their motion is one of *mandamus* insofar as they seek to compel the acceptance of their respective Petitions such that they can go forward with their challenge. Respondent does not oppose the form of the application, but objects to the relief sought; no cross-motion is filed. The moving and opposition papers have identified and crystallized the issues for the determination by the Court. Accordingly, the Court will overlook any defects or irregularities as to form. CPLR §2001. Miller v. Bd. of Assessors, 91 N.Y.2d 82 (1997); Mitchell v. New York Hospital, 61 N.Y.2d 208, 214 (1984); J & A Vending, Inc. v. J.A.M. Vending, Inc., 303 A.D.2d 370 (2nd Dept. 2003).

Petitioners are property owners in the Town of Carmel. They own property consisting of Petra Island in Lake Mahopac, and two tax lots on the lake where they maintain a boat launch. On May 15, 2018, they executed complaints challenging the assessments on their properties. By statute, the tax certiorari Petitions are heard by the Board of Assessment Review on the fourth Tuesday in May, commonly known as Grievance Day (RPTL §512). In May, 2018, there were five Tuesdays. Petitioner's counsel erroneously calendared the Grievance Day for May 29th, rather than May 22nd. He discovered his mistake on May 23rd, and the following morning, May 24th, he went to the Assessor's Office to deliver the complaints. According to Petitioner's counsel, upon arriving at the Assessor's Office, he spoke to a gentleman at the counter and placed the complaints on the counter, asking that a copy be date-stamped. The request was denied, as the counter person advised Petitioner's counsel that he would not accept the papers since Grievance Day was two days earlier. Counsel explained his belief that the hearing by the Board of Assessment Review was continued and the Board would continue to hear and consider grievances. The second person behind the counter, possibly the Assessor conceded the hearings

were continuing but the complaints were untimely. Counsel then stated to the alleged Assessor that he should not judge the timeliness of delivery, as that was the Board's function, and the papers should be delivered for their consideration. The person believed to be the Assessor directed his co-worker to take the papers for submission and provide counsel with date-stamped copies. The co-worker followed the instructions. These facts are not disputed. Respondent has attached the Minutes of the Board of Assessment Review for the meetings held on May 22, 2018 and May 31, 2018. The latter meeting involved those who appeared on May 22, 2018, but whose matters were not heard. There is no indication of any new matters added to the May 31, 2018 meeting.

The issue before the Court is whether Petitioners made a timely filing of their complaints as required by statute. The statutory scheme is set forth in Real Property Tax Law §§522-528.

Section 524(1) provides:

“1. Complaints with respect to assessments may be filed with the assessor at any time prior to the hearing of the board of assessment review or with the board of assessment review at such hearing, but may not be filed with the board of assessment review at any adjourned hearing it may conduct. Where a complaint is filed within three business days preceding such hearing, the board of assessment review shall grant an assessor's request for an adjournment to permit the assessor to prepare a response to the complaint. Any complaint filed on or before the date established by law for the hearing of the board of assessment review shall be deemed timely.” (Emphasis added)

Petitioner urges a construction that would allow for the submission of complaints at any time during the “hearing” and before the “correction of final assessment rolls”. While Petitioners refer to a submission “prior to any adjourned hearing” yet, they omit the full phrase: “but may not be filed with the board of assessment review at any adjourned hearing it may conduct”, Petitioner's reliance on a 1976 Opinion of Counsel (5 Op. Counsel S.B.E.A. No. 74), is

misplaced as the statute on which the Opinion was based was amended in 1991. L. 1991 c.662

§4. The 1976 Opinion is consistent with the position of Petitioners, which was also supported by

the Supreme Court in 1972. 700 Shore Road Associates v. Board of Assessment Review, 70

Misc.2d 822 (Nassau Cy,1972). However, the Court observed:

“5. Where, however, as in this case, the taxpayer has filed his protest during the adjourned hearings, he is within the statute. Such protest is timely and must be considered by the Board. Concededly, this may well cause chaos in a suburban area such as Nassau with approximately 400,000 parcels upon which several thousand of protests are filed annually. This, then, presents the problem of when does the assessment roll become final?”

The tentative roll must be adopted on or before the first day in May. If the Board sits until July 31, it must deliver to the Assessors on or before August 1, the final roll of assessments for tax purposes (Real Property Tax Law §1524, sub.2). Should several hundred aggrieved taxpayers file their protests on the last adjourned date (July 31), it would be humanly impossible for the Board to perform the duties with which it is charged. Obviously, this problem calls for clarification at the next legislative session.”

This caution recognizes the need for an end date for submissions, and the subsequent statutory amendments. The 1991 amendments to RPTL §524, based on the legislative history were not intended to extend a complainant’s filing time. Instead, intending to correct procedural shortcomings in the assessment review process, the amendments provided a mechanism for addressing complaints filed before Grievance Day, but not new complaints. RPTL §512(3) provides “the board of assessment review may adjourn from time to time for the purpose of hearing complaints”. There is no authority to receive newly filed complaints. The Memoranda contained in the Governor’s Bill Jacket expressly states:

“This proposal would provide that an adjournment for the purpose of receiving requested information on previously filed complaints is not an adjournment permitting the filing of new complaints”.

Assemblyman Friedman also wrote in support of the legislation: “Additionally the bill establishes grievance day as the last day to file an assessment with the board of assessment review” “...Setting a final day to file challenges and permitting adjourned hearings for grievances filed near to the deadline will enhance that ability”. The legislative history acknowledges that the statutory structure of the Board of Assessment Review has been amended many times to address procedural shortcomings in the administration of assessment complaints.

The amendments made in 1991 were followed by amendments in 1996. The 1996 amendments, in the final sentence of RPTL §524(1) deleted the language “fourth Tuesday in May or on or before such later” and inserted the word “hearing” after deleting the word “meeting”,¹ thereby setting a deadline for the submission of complaints as the “date established by law for the hearing”.


The assessment review process in a quasi judicial (RPTL §512). The filing of a grievance is a condition precedent and jurisdictional prerequisite to judicial review. Failure to comply with statutory requirements negates the jurisdiction of the Board. Frei v. Town of Livingston, 50 A.D.3d 1381 (3rd Dept. 2008). Accordingly, the Complaints in the above three actions were untimely, and it is

ORDERED, the above actions are dismissed.

¹ The substitution of “hearing” for “meeting” was intended to distinguish the public sessions at which evidence is introduced from private sessions where final assessed values are determined. Memorandum in Support by Stephen J. Harrison, Office of Real Property Services New York Bill Jacket, 1996 S.B. 6966 Ch. 541.

The foregoing constitutes the Decision and Order of the Court.

Dated: Carmel, New York 10512
March 1, 2019


HON. VICTOR G. GROSSMAN, J.S.C.

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