

L.V.M.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - IA6

In the Matter of

CONSOLIDATED INDEX NUMBER
102192/07

UNDERBRUCKNER REALTY CORP., and BRONX
CENTER FOR REHABILITATION AND HEALTHCARE,

Taxes of 1999/00 through 2007/08

Petitioners,

Block: 3732 Lot: 20

- against -

THE TAX COMMISSION OF THE CITY OF NEW
YORK AND COMMISSIONER OF FINANCE OF THE
CITY OF NEW YORK,

FILED
BRONX COUNTY CLERK'S OFFICE

Respondents.

NOV 15 2010

For Review of an Assessment Pursuant to Article 7 of the Real
Property Tax Law,

HON. HOWARD R. SILVER:

These are proceedings pursuant to Article 7 of the Real Property Tax Law (RPTL),
challenging as unequal the assessments of the subject property for the tax years 1999 through
2007. These proceedings were consolidated for purposes of trial. Said trial was held before me
commencing on January 5, 2010 and continuing on January 21, 2010, January 25, 2010, April
23, 2010 and May 20, 2010.

Petitioner produced Saul Schechter, an accountant with Martin & Friedman CPA's, the
accountants for Bronx Center for Rehabilitation and Healthcare and Donald Franklin, its real
estate appraiser. The City called Alfred Fargione, Chief Healthcare Physical Analyst, Dept. of
Health, Dept. of Long term care reimbursement, and Gerald V. Rasmussen, a Commercial Real

Estate appraiser with Cushman & Wakefield.

The subject property is a 200 bed skilled nursing facility constructed in 1973 primarily of brick and standing 6 stories high. The property comprises 64,680 square feet and is located in the Soundview neighborhood, north of Bruckner Blvd. in the Bronx. It was designed and built as a nursing home and cannot be converted into any other use. The facility was acquired by petitioner on October 22, 1998 for \$6,700,000.00.

The valuation of assessed property is essentially a question of fact. (*Matter of Consolidated Edison Co. of New York Inc. v. City of New York*, 3 NY 3d 591, 595; *Matter of Saratoga harness Reing v. Williams*, 91 NY2d 639, 646-647; *Matter of General Elec. Co. v. Town of Salina*, 69 NY2d 730, 732; *W. T. Grant Co. v. Srogi*, 52 NY2d 496, 510). Thus, the courts have considerable discretion in reviewing the relevant evidence as to the specific property before them. Of course, the ultimate purpose of a tax certiorari valuation proceeding is to arrive at a fair and realistic value of the property (*Matter of Gret Atl. & Pac. Tea Co. v. Kiernan*, 42 NY2d 236, 242). But,

“[t]he command of ... the Real Property Tax Law that all property be assessed at full value does not pronounce an inelastic approach to valuation. Nor does the legislative directive specify a particular method for establishing value. And courts, being under no compunction to do so, have not confined assessors to any one course. To ensure that the existence of varied and multifaceted patterns of land use and ownership does not frustrate the design that each contribute equitably to the public fisc, courts have upheld any fair and nondiscriminatory method that appears most likely to achieve that end” (*Matter of Merrick Holding Corp. v. Board of Assessors of County of Nassau*, 45 NY 2d 538, 541).

There is no hard and fast rule as how to assess the property. Both parties present cogent arguments as to why their method is correct and present cases in support thereof. The petitioner used a “bottoms up” methodology while respondents used a “top down methodology”.

According to Petitioners calculations:

	Year:		
<u>Actual Assessed Value</u>	<u>1999</u>	<u>2000¹</u>	<u>2001</u>
	\$2,889,000	\$2,889,000	\$2,913,375
<u>Petitioner Assessed Value</u>	\$1,962,000	\$2,061,000	\$2,065,500
<u>Petitioners Reduction</u>	\$927,000	\$828,000	\$848,300
<u>Actual Assessed Value</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
	\$3,015,000	\$2,947,500	\$2,947,500
<u>Petitioner Assessed Value</u>	\$2,259,000	\$2,241,000	\$2,263,500
<u>Petitioners Reduction</u>	\$756,000	\$706,500	\$684,000
<u>Actual Assessed Value</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
	\$3,051,000	\$3,253,500	\$3,262,500
<u>Petitioner Assessed Value</u>	\$2,493,000	\$2,215,500	\$2,587,000
<u>Petitioners Reduction</u>	\$558,000	\$738,000	\$675,000

After reviewing the testimony, listening to the arguments of counsel and reading the briefs submitted, the Court determines that the true valuation of the property is greater than proposed by the Petitioner and less than that proposed by the Respondents.

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Accordingly, it is the Court's determination that the petition is granted to the following extent. The assessed valuation shall be reduced as follows:

<u>Year</u>	<u>Amount</u>
1999	\$463,500
2000	\$414,000 ¹
2001	\$424,150
2002	\$378,000
2003	\$353,250
2004	\$342,000
2005	\$279,000
2006	\$369,000
2007	\$337,500

This action is remanded to The Tax Commission of the City of New York for recalculation of the tax due for the period under review in conformity with the above determination. The foregoing constitutes the decision and order of the Court.

Dated: NOV 9 2010



J.S.C.

¹ In as much as Respondents agree that Petitioner was overassessed by \$81,000.00 in the year 2000, such amount for the year 2000 need not be calculated.