

SUPREME COURT : NASSAU COUNTY  
PART 48

ORIGINAL

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SECURITY BICYCLE ACCESSORIES, INC.,

Petitioner,

Index No.  
403564-05

-against-

THE BOARD OF ASSESSORS and/or THE ASSESSOR  
of the COUNTY OF NASSAU and NASSAU COUNTY  
ASSESSMENT REVIEW COMMISSION,

Respondents.

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Mineola, New York  
January 30, 2008

B E F O R E:

HON. DANIEL R. PALMIERI,

Justice.

A P P E A R A N C E S:

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\*\*\*JUDGE'S DECISION AFTER TRIAL\*\*\*

MARGUERITE MONASTERO  
RPR, RMR, CRR

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Judge's Decision

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THE COURT: Okay. I thank you all for your presentations. This will constitute the decision and order of the Court, following which I would expect that there would be a judgment submitted on notice to both sides.

As noted by the attorneys in their closing statements and their opening statements and by the documentary evidence, this case deals with the valuation for real estate tax purposes of property known as 32-44 Intersection Street in the Village of Hempstead of Nassau County. The years under review are valuation dates as of January 2, 2004, 2005 and 2006, which encompass the tax years respectively 2005/6, 2006/7 and 2007/8. I might also sometimes refer to them as years 1, 2 and 3, but all of them have the same meaning.

This is a building that was built back in the 1930's apparently as a brewery. The building has on the grade level, ground level, on the east and west side two loading docks. One loading dock has also been referred to as a parking area. That's on the east side. What they have in common is that they're both at grade level and that they are

## 1 Judge's Decision

2 separated by the main portion of the building,  
3 which is four-and-a-half feet above grade level.  
4 Beneath the main building is a basement area.

5 So we have three types of areas in question  
6 here. We have the main portion of the building;  
7 we have the basement beneath the main portion of  
8 the building which is accessed through a ramp from  
9 the Sealey Avenue side of the building, which I  
10 believe is the west side; and we have the third  
11 type of area under review, which is what I'm  
12 calling the loading dock area, and the combined  
13 total of the loading dock area on both east and  
14 west sides is 17,398 square feet.

15 The parties stipulated as to virtually every  
16 aspect of the valuation process with the exception  
17 of whether and to what extent a value would be  
18 placed upon the loading dock areas. The  
19 polarization is that the petitioner's appraisals  
20 and appraisers attribute zero rental value or  
21 income value to the loading dock areas, finding  
22 that whatever value they lend to the property may  
23 be expressed as part of the income for the main  
24 portion of the building and basement. The  
25 respondent takes the opposite pole and treats the

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### Judge's Decision

loading dock areas, that is, that 17,398 square feet, as part of the main level of the building.

Both sides agree as to the per square foot rental value of the basement area, which may be employed for a capitalization of income approach to arrive at a valuation.

So that seems to be the only item that I need to address. It's not necessary for me to address whether or not the respondent -- and let me back up.

As part of the respondent's approach to valuation, the respondent used a blended method, blending an income valuation approach with a comparable sales approach and weighting them it looks like two-thirds, one-third; 65 percent, 35 percent. I don't have to address whether it was appropriate or inappropriate to do that necessarily because either way results in a valuation adopted by the respondent which would sustain the assessed values.

I do reject the respondent's use of the same rental rate for income valuation purposes for the loading docks as the rest of the building annexed to the basement. I do that because of the

## 1 Judge's Decision

2 discrepancy of four-and-a-half feet between  
3 levels; the fact that the loading dock areas do  
4 not seem to be finished; whether or not they are  
5 heated could not be determined, although there was  
6 some testimony that there were space heaters  
7 there. There seems to be some functional  
8 obsolescence there and it doesn't look like  
9 they're usable for very much given the discrepancy  
10 in the levels.

11 With respect to the adoption of the  
12 petitioner's methodology, I find that the  
13 petitioner's methodology of valuation is the more  
14 credible and should be the method employed. In  
15 this regard I found that the evidence in support  
16 of the assessment was not credible, was not worthy  
17 of belief, appeared to me to take too many twists  
18 and turns, was inconsistent in many regards,  
19 contained inconsistencies, lacked the probative  
20 rationale and in many regards was speculative and  
21 conclusory. So I would not be relying upon the  
22 respondent's evidence to support the assessment.

23 That doesn't end the inquiry though because  
24 I'm not prepared to wholeheartedly adopt the  
25 methodology suggested by the petitioner in this

## 1 Judge's Decision

2 regard. Petitioner's experts and appraisals and  
3 testimony places, I believe, undue emphasis on the  
4 necessity of devoting exclusively to parking areas  
5 the parking area portion of the loading dock and  
6 ignores that this property is located in a highly  
7 urbanized portion of the County.

8 It is blessed with transportation, very good  
9 transportation, nearby. There is bus service on  
10 Franklin Avenue a block away, there is a bus  
11 terminal only a matter of a couple of blocks away  
12 based on the map, and there is a Long Island  
13 Railroad terminus nearby. There is some municipal  
14 parking area nearby as well as on-street parking.  
15 Moreover, the property that has been devoted for  
16 the use as a parking area is enclosed. It has  
17 some utilities, mainly electricity, and it has  
18 other uses beyond that which can be attributed  
19 solely to parking and loading dock areas.

20 That being said, it also has its drawbacks;  
21 to wit, the aforementioned four-and-a-half foot  
22 discrepancy in grade; the inability to have large  
23 size trucks come in and unload.

24 So in sum, while I adopt the methodology for  
25 income purposes and for valuation of the property,

## 1 Judge's Decision

2 I do not adopt the appraiser's reliance on the use  
3 of this 17,000 plus square feet as solely for  
4 parking and loading areas. So I do believe that  
5 there should be some rental income attributable to  
6 the loading dock areas.

7 And in this regard, I've considered the  
8 comparable, it seems to be a probative comparable,  
9 the Harley property nearby, which valued surface  
10 parking at a slightly different level. I've also  
11 considered the ratios which the parties themselves  
12 established between the rent per square foot for  
13 the area of the building not in dispute and the  
14 basement area. It appears to me that for purposes  
15 of ascertaining income, the loading dock areas of  
16 17,398 square feet should bear some proportional  
17 relationship to the difference in valuation  
18 between the main level and the basement level.

19 I applied, just for purposes of arriving at  
20 some rationale, a factor of approximately 46  
21 percent of the basement rent, which has been  
22 agreed upon by the parties, in order to determine  
23 what I consider to be a fair rental value for the  
24 loading dock areas. Rounding and using round  
25 numbers, not rounding to pennies, that would yield

## 1 Judge's Decision

2 a rental value of \$1.50 per square foot for the  
3 year 1, that's the January 2, 2004 year; and \$1.65  
4 per square foot for years 2 and 3, January 2, '05  
5 and January 2, '06.

6 For the purposes of the balance of this  
7 decision, and I'm open to mathematical  
8 corrections, I've employed and I'm referring to  
9 page 37 of the revised income and expense tables  
10 submitted by the petitioner's appraiser. And what  
11 that yields is an increase in net income  
12 attributable to the loading dock area of \$26,097  
13 for the year 1; \$28,706 for years 2 and 3.

14 Applying the agreed upon total capitalization  
15 rates, which are different for each of the years  
16 in question but which have been adopted by  
17 stipulation by the parties, that yields an  
18 increase in value over what the petitioner argues  
19 for based upon the loading dock areas of \$148,870  
20 for year 1; \$165,643 for year 2; and \$176,110 for  
21 year 3.

22 The additional income is the same. The  
23 disparity is based upon a difference in combined  
24 capitalization rates.

25 The assessed value of the additional loading

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2 dock areas based upon the agreed upon equalization  
3 rates adopted by the parties is \$1,392 for year 1;  
4 \$1,549 for year 2; and \$1,699 for year 3.

5 The indicated reduction in assessed value  
6 would be for year 1, \$1,982; for year 2, \$3,432;  
7 and for year 3, \$4,133. That was the methodology  
8 employed.

9 Essentially the basis for my refusal to  
10 attribute zero value to the loading dock area is  
11 that all real estate has value. This property or  
12 this area in question is not totally limited to  
13 use for the purposes expressed by petitioner. And  
14 I think that this decision and methodology  
15 employed adequately reflects the need to have some  
16 parking area, but balances it against the fact  
17 that there are other uses to which this property  
18 may be employed.

19 That constitutes the decision and order of  
20 this Court. I'm asking the petitioner to please  
21 submit a judgment consistent with the terms of  
22 this decision.

23 Once again, thank you for your time and  
24 attention and we'll see everybody who may be  
25 involved in it tomorrow on the next case that

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Judge's Decision

we're trying. Have a nice day.

C E R T I F I C A T I O N

I, Marguerite Monastero,  
Official Court Reporter, do hereby certify  
that the within transcript is a true and  
accurate transcript of my stenographic  
notes.

Marguerite Monastero  
Marguerite Monastero  
RPR, RMR, CRR