

Matter of Eatons Neck, LLC v The Assessor
2015 NY Slip Op 32341(U)
December 11, 2015
Supreme Court, Suffolk County
Docket Number: 17036/2012
Judge: John C. Bivona
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX NO. 17036/2012, 31188/2013,
31187/2013 & 31186/2013

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 2 - SUFFOLK COUNTY

P R E S E N T :

HON. JOHN C. BIVONA
Justice of the Supreme Court



-----X
In the Matter of EATONS NECK, LLC,

Petitioner,

-against-

THE ASSESSOR and THE BOARD OF
ASSESSMENT REVIEW OF THE TOWN OF
HUNTINGTON,

Defendant.

-----X

PLTF'S/PET'S ATTY:
FARRELL FRITZ, PC
1320 RXR Corporate Plaza, West Tower
Uniondale, NY 11556

DEFT'S/RESP'S ATTY:
BRACKEN MARGOLIN BESUNDER, LLP
1050 Old Nichols Road, Suite 200
Islandia, NY 11749

Pursuant to **CPLR §3001 and CPLR Article 4**, petitioner, Eatons Neck LLC, seeks a declaratory judgement judicially determining that certain real property consisting of 440 acres now known as Sandpiper Farm qualifies for an agricultural assessment value in accordance with the provisions of **Agriculture and Markets Law §304-a**.

Petitioner filed timely applications with the office of the Assessor of the Town of Huntington for the tax years 2011, 2012, 2013 and 2014. The two earlier tax years are governed by **Agriculture and Markets Law §306**, whereas two latter years are controlled by the provisions of **Agriculture and Markets Law §305** with the distinction simply being whether the land was or was not within an agricultural district at the time.

Those applications were denied by the respondents.

At the time of the commencement of the Trial on October 15, 2014, the Court was advised that petitioner had also made an application for an agricultural assessment valuation for the tax year 2015

and was likewise denied.

Despite the procedural objection of counsel for the respondents, the Court nevertheless takes judicial notice of the filing for tax year 2015/2016 sua sponte and shall consider tax year 2015/2016 as part of the Court's review of the petition.¹

When is a Horse Farm not a Farm?

For the tax years under review, petitioner, Eatons Neck LLC, has leased the subject property to Laurie J. Landeau, a veterinarian who trains horses for exhibition and sport competition and who operates the Sandpiper Farm complex.

Upon consent of counsel, the Court had the occasion to view and inspect Sandpiper Farm and to actually observe a "drag fox hunt". Rather than actually chasing a real fox, the participating mounted horse riders with a dog pack attendant, pursued another rider who drags a bag scented with fox urine or who has sprayed the terrain with fox urine.

The subject land and its approximate 440 acres had been traditionally farmed since the late 17th century.²

During the Trial, it was established that the property which is located within the geographic bounds of the Incorporated Village of Asharoken and the Town of Huntington was explicitly prohibited from operating a commercial agricultural venture since the Village had zoned out of existence all commercial agriculture operations. See **Asharoken Village Code, Article II, §125-3**. Enumeration of districts; agricultural activities prohibited. [Amended 2-3-1964; 4-8 2005 by Local Law No. 2 2005].

¹ Real property taxation in the County of Suffolk is governed by the Suffolk County Tax Act (Chapter 311, Laws 1920 as amended).

² The subject property has had a checkered history with the Village of Asharoken. In *Village of Asharoken v. Pitassy* 119 AD2d 204 (1986) Mot lv to Appl den 69NY2d 606, the Court confronted the issue of whether a riding academy could be considered a private school within the meaning of the Village zoning ordinance.

It is not seriously challenged that the training of horses per se does not constitute an agricultural use. Respondent's Post Trial Memorandum of Law cites **Matter of Kinderhill Farm Breeding Assoc. v. Walker 54 AD 2d 811 (3 Dept. 1976) aff'd 42 NY 2d 919 (1977)**.

In that case, the Appellate Court noted that petitioner owned 140 acres of land in the Town of Chatham, Columbia County "upon which it breeds, raises and sells thoroughbred horses". The land was also used for other ancillary commercial activities, raising and selling Christmas trees, hay and beef cattle.

The Town zoning laws permitted the property to be used for "agricultural, including sale of farm produce" and "commercial horse farms and riding academies".

The Town Board had denied petitioner a mobile home license "solely on the ground that the proposed occupant of the mobile home was not a full time "farm" worker. **Matter of Kinderhill Farm Breeding Associates, V. Walker 54 AD 2d 811, 812**.

The Court held that the Town Board's conclusion that petitioner did not operate a "farm" was erroneous and irrational.

"The zoning ordinance in question by its very terms and the inclusion of definitions set forth in other state publications, demonstrates a clear intent to include petitioner's operation within the contemplated farm enterprises; that is the breeding of horses (... **Agriculture and Markets Law §301 Subds 3,4**)"
Matter of Kinderhill Farm Breeding Associates v. Walker, Ibid.

The Court of Appeals affirmed this determination and likewise concluded that "petitioner was engaged in the business of breeding, raising and selling horses on its premises, which were located in a zoning district of the town in which permitted uses included agricultural, including sale of farm produce and commercial horse farms". **Matter of Kinderhill Farm Breeding Associates v. Walker 42 NY 2d 919, 920 (1977)**.

The facts of the arguments presented in the dispute before this Court centered upon three primary issues:

- (1) Is petitioner engaged in an agricultural enterprise by its training of horses?
- (2) How many acres of the Sandpiper Farm are actually utilized to train horses?
- (3) Has petitioner met the gross sales requirement mandated by statute to qualify for an agricultural property assessment for the tax years under review?

In an effort to determine the answers to each of the questions, the Court has considered a variety of legal authorities to include not only statutory and judicial case law, but also regulatory enactments, local history and common usage.

New York Code Rules and Regulations §8194.1,³ provide several guiding definitions:

- (a) Agricultural Products means crops, livestock and livestock products and to the extent that law is used to produce woodland products, the property qualifies for an agricultural assessment;
- (b) Agricultural Assessment means the sum of the products of the number of acres of land used in agricultural production and the appropriate agricultural assessment value for such land, as certified by ORPTS, multiplied by the latest state equalization rate or specialization rate;
- (c) Agricultural Assessment Value means the value per acre assigned to land used in agricultural production for assessment purposes pursuant to **§304-a** of the **Agriculture and Markets Law**;
- (d) Agricultural District means a district created pursuant to **Article 25-a** of the **Agriculture**

³ Title 20 Department of Taxation and Finance, Chapter XVI Real Property Tax Administration Part 8194 Agricultural Assessments.

and Markets Law.

Agriculture and Markets Law §301 (2) defines the terms “crops, livestock and livestock products” and expressly includes horses. **Agriculture and Markets Law §301 (2) subd e.**

“Gross Sales Value” is defined to mean the proceeds from the sale of crops, livestock and livestock products produced on land used in agricultural production. **Agriculture and Markets Law §301 (9) (a).**

Thus, it seems implicit by the statutory and regulatory definitions that the sale of horses, as recognized livestock, is deemed to be an agricultural product which clearly qualifies for an agricultural assessment of the land used for the sale of horses.

However, the law also prescribes other conditions related to the size of land used and the amount of gross sales which must be generated in order to obtain an agricultural assessment. See **Agriculture and Markets Law §301 (4)** which defines the phrase “Land used in agricultural production”.

In general, the land size used for the sale of horses in this case cannot be less than seven (7) acres and which must be used as a single operation “in the preceding two years for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more...”**Agriculture and Markets Law §301 (4)(f).**

The land may be rented. **Agriculture and Markets Law §301 (4)(a).** If the size of the land used in agricultural production is less than seven (7) acres, then the average gross sales value must be \$50,000.00 or more. **Agriculture and Markets Law §301 (4) (f).**

The term livestock is scattered across the landscape of legal literature in statutes, case law, scholarly treatises and in regulatory enactments.

In general “livestock” is defined to mean “the horses, cattle, and sheep and are the useful animals kept or raised on a farm or ranch”. (Webster’s New Universal Unabridged Dictionary 1994 Dilithium

Press, Ltd. at page 839)

One would also suspect that horses as livestock would also be a source of food stock. At Trial, two of petitioner's Trial witnesses upon examination by the Court, testified that none of the horses trained at the subject site are consumed as food stock, nor are any of them shipped to a slaughterhouse to be processed into a food product. As observed by the Court, in many other places throughout the world, horsemeat is commonly eaten on a daily basis as a food source by both humans and animals.

Apart from being a source of food, livestock and other typical farm animals may produce a product for sale. While the horses trained at Sandpiper Farms produce copious amounts of equine product, the manure that accumulates is not offered for sale. Nor, because of the Asharoken Village prohibition, are any of the horses bred on site, but instead are bred in another state. **cf 20NYCRR 528.7**

Based upon its review and research, the Court concludes that petitioner is engaged in the operation of an agricultural enterprise as defined by New York State Law by virtue of its training of horses for sport competition and exhibition.

While the respondents vociferously argue that petitioner's enterprise at Sandpiper Farm is more aptly described as a "hobby" enterprise, the Court, were it to accept such description, would be faced with the legal dilemma noted by Justice Jackson's in a dissenting opinion in **Farmers Reservoir Irrigation Co. v. McComb 70S.Ct.31, 337 US 755:**

"If, as the Court holds, these employees are engaged in production of agricultural crops for commerce, I do not see how it can hold that they are not engaged in agriculture. If the Court could say "to be or not to be, that is the question", it might reasonably answer in support of either side. But here the Court tells us that the real solutions of this dilemma is "to be" and "not to be" at the same time. While this is a unique contribution to the literature of statutory construction, I can only regret the great loss to the literature of the drama that this possibility was overlooked by the Bard of Avon. It will probably now be as great a surprise to the proponents of the agricultural exemption as it would have been to Shakespeare, had it been suggested to him."

As noted previously, respondents argue that the training of horses as an activity does not qualify

for an agricultural assessment because such activity as practiced by petitioner's tenant at Sandpiper Farm is really a hobby, rather than a genuine agricultural enterprise cognizable under New York Law.

The Court, however, concludes otherwise. The testimony before the Court clearly supports the proposition that the training of horses for competitive sport or demonstration requires that the horses be exposed to a varied terrain. The Court observed a "fox" hunt as a competitive training exercise at Sandpiper Farm.

James F. O'Rourke, formerly a director of the United States Equestrian Foundation and a member of several equestrian teams representing the United States in international championship competition, testified that horses competing in various equestrian events require training on varied terrain to experience "changes in footing". He specifically described the training necessary for a horse to compete in a fox hunt. He testified about riding in wooded areas, upon fields and exposure to various types of soil along with the use of trails and traversing through treed areas. He further testified that Sandpiper Farm was a perfect venue from a training perspective because of its size, beaches, woods, and different types of soil along with its expanse of open fields. Mr. O'Rourke also testified in detail regarding the sport of driving—horses pulling an occupied carriage of different sizes. He did concede that the trails at Sandpiper Farm did not appear to be overused.

Ms. Merri Ferrell testified that she supervised the farm management program at Sandpiper Farm. She also trained the horses from both a physical and psychological perspective. In 2012, the number of horses on site had increased to twelve (12) and at the time of Trial numbered twenty (20). Admitted in evidence was an inventory list of horses by name who were trained at Sandpiper Farm. She testified that Sandpiper Farm is a facility used to train horses in many different modalities and style. The facility trains horses for many different purposes; they were not trained to traverse the marshland, nor were the horses ever converted to a food product.

She testified that some of the horses residing at the farm have been sold and subsequently used for a variety of different purposes.

Upon cross-examination, she testified that the subject premises was primarily used to train horses for competitive sport. In 2011, one of the principle leasing agents, Daugh Corporation had twelve (12) horses at the site which only operated on a seasonal basis. She testified that from the years 2010 to 2014, three (3) horses had been sold and that the site was not used for breeding or to provide stud services.

Although, in the Court's view, the training of horses at Sandpiper Farm clearly had a distinct recreational component geared to pleasure horses and for pleasure riding in competitive forums, nothing in the legal literature of New York law evinces any legislative intent to exclude horse training purely for pursuits of recreation or pleasure from eligibility to obtain an agricultural assessment valuation.

Respondent's principal witness was Mark Twentyman, a former and retired employee of the New York Office of Real Property Services (ORPTS). He had served as the head of the division at the agricultural assessment office with the task of training municipal assessors throughout the state. Ultimately, it is the local municipal assessor who makes the final determination to grant or deny an agricultural assessment to a property owner.

Although Mr. Twentyman knew that the Sandpiper Farm facility was located in a designated agricultural district, he testified that the premises were not a typical farm. Despite observing horses at the site utilizing trails and also being ridden in off trail woodlands, Mr. Twentyman concluded that approximately only 130 acres of the property would otherwise qualify for an agricultural assessment.

Mr. Twentyman testified that in his expert opinion, petitioner had failed to satisfy its burden of proving the monetary threshold to be entitled to the agricultural assessment under New York Statutory Law. His expertise was unassailable: Mr. Twentyman had investigated in excess of one hundred agricultural assessment applications during his thirty year tenure with ORPTS.

In his opinion, a deposit payment for a horse purchase in 2011 in the amount of \$3,200.00 with the sale transaction completed in 2012 for the balance due would not satisfy the requirement of \$10,000.00 in annual sales for the two year period designated by statute.

It was not contested that the property known as Sandpiper Farm does not meet the size acreage requirement of either 7 or 10 acres, although the respondents called a town employee who testified regarding his employment of a computer program used to evaluate property to determine percent of usage.

Clearly, the property comprises approximately 440 acres in size.

Petitioner's 2011 Income Tax Return Schedule F was admitted in evidence (Trial Exhibit 10) showing sales income of \$3,200.00 representing a deposit for the purchase of a horse.

The 2012 Income Tax Return (Trial Exhibit 11) was admitted in evidence including Schedule F and sales data. Two horses were sold in 2012. Two checks were also admitted in evidence: a check dated 9/12/2012 in the amount of \$16,000.00 and one dated 06/29/2012 in the amount of \$17,000.00.

The Court has also considered Chapter 106 of the Laws and Ordinances of the Town of Huntington which establishes a Citizens Advisory Committee on farming whose purpose is to advise the Town Board and the involved town departments in matters affecting farming in the Town of Huntington. The committee has the responsibility to study issues relating to farming which are of vital importance to the town residents.

Section 106-4 provides that the Committee shall make recommendations to the Town Board regarding all aspects of farming and the growing of consumable products for sale in the Town.⁴

Absent from the Trial testimony and evidence was the testimony of any of the local residents complaining about the activities conducted at Sandpiper Farm insofar as traffic, noise, noxious odors

⁴ Chapter 106 was adopted June 25, 1996 by Ordinance #96-CE-1

or other annoyances. Reference, however, was made to the legislative history of the Village of Asharoken and its adoption of a master plan currently prohibiting agricultural operations within the village.

Lastly, the Court has also considered several opinions of counsel to the State Board of Equalization and Assessment.⁵

In reading 5 OP. Counsel SBEA, addressing specifically the gross sales requirement and **Agriculture and Market Law §301, 305 and 306**, the opinion articulated the basic rule of general construction, namely that “statutes exempting real property from taxation must be strictly construed against the property owner seeking such exemption (citation omitted)”.

The opinion further notes that the interpretation should not be so narrowly and literally construed as to defeat its settled purpose (citation omitted).

The statutory measure to be applied in determining eligibility for the statutory agricultural assessment is gross average sale, rather than gross income.

Sandpiper Farm is a Horse Farm

Clearly common sense and New York statutory and case law conclude that a horse is livestock.

Despite respondent’s argument that the Sandpiper Farm operation is a hobby and not an agricultural enterprise, the Court has concluded otherwise.

The testimony of the site manager was credible and convincing as to the nature of the training of the horses and the utilization of the land area on the subject property.

The Court concludes that 385 acres of the Sandpiper Farm are used in the training of horses.

As observed by the Court, during the fox hunt the horses traversed a number of different topographical features existing on the land. Since the applicable statutory law does not with any clarity

⁵ Renamed as Office of Real Property Services (ORPTS)

exclude the activity of horses trained for sport competition as the term livestock is defined, the horses trained at Sandpiper Farm squarely fit the general definition of an agricultural use.

Agriculture is defined as the science or art of cultivating land in the raising of crops, tillage, husbandry and farming. It also includes the production of crops, livestock, or poultry. Husbandry is defined as the cultivation and production of edible crops or animals for food, agriculture and farming. Also, it is the science of raising crops or food animals. Livestock is defined as the horses, cattle, sheep, and other useful animals kept or used on a farm or ranch. Horses found on farms and ranches are not necessarily solely to serve as a source of edible food. They are used in connection with tillage, farming, generating useable manure and even recreational uses, if any, on the farm or ranch.

Thus, the Court concludes that petitioner is engaged in agriculture, even in the face of local ordinances.

The Court has reviewed a portion of the village code which reads in part that no business or trade other than agriculture has ever been carried on within the Village or on the lands immediately adjacent to the Village, which has been exclusively devoted to residential use. There has been no agricultural use of land within the Village since 1939. The section in question, §125.3 a, further recites concerns that the introduction of business including agriculture in the Village might seriously affect the health and comfort of its residents and the values of property therein. The code creates three residential classes in its zoning ordinance. Of particular note is subsection B: "All agricultural activities, including the growing or harvesting of agricultural products, including but not limited to grains, vegetables, fruits, berries, flowers, trees and shrubs for commercial purposes, and the operation of nurseries and/or greenhouses for commercial purposes, shall be prohibited in all such residential districts. (Amended 10/03/2006 by L.L. No. 4-2006) There is no reference to livestock.

Gross Sales Requirement

The testimony established that the value of a horse may be thousands of dollars. One of the proofs offered by petitioner was an alleged promissory note which covered partial payment of a horse sold by petitioner with the balance to be paid in another calendar year. **§5-701(a) General Obligations Law** provides in part that: Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking: (1) by its terms is not to be performed within one year from the making thereof, or the performance of which is not to be completed before the end of a lifetime; ...**(3)(d)** there is a note, memorandum or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought, or by its authorized agent or broker.”

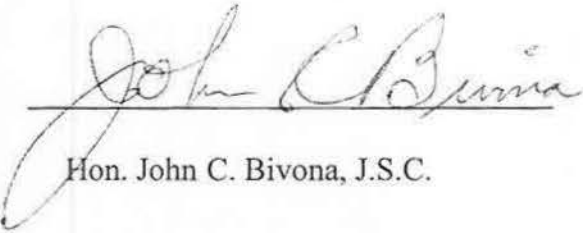
Having reviewed the transcripts of the testimony as well as the documents in evidence, and noting that neither the principals of the entity leasing the subject property nor the purchasers of any of the horses allegedly sold testified regarding the gross sale value and income within the time periods under review, the Court concludes that there is a failure of proof. The petitioner has failed to meet its burden of proof in conforming to statutory law. The Court further notes that respondents did not have the opportunity to cross-examine or inquire of the petitioner concerning the issues relevant at Trial, especially the gross amount of sales made as a result of the training of horses at Sandpiper Farm.

The Court concludes that the evidence admitted on the gross issue of sales, gross value and/or gross income does not meet the statutory criteria necessary to support the conclusion that the subject property generates horse sales, which averaged \$10,000.00 per year for the tax year reviewed.

Consequently, while the Court concludes that the petitioner engages in an agricultural use and agricultural production, it has failed to meet the required monetary sale threshold that the laws of New York command to be granted an agricultural assessment.

Accordingly, the petitions are all dismissed.

Dated: December 11, 2015



Hon. John C. Bivona, J.S.C.