

## **TOWN OF CUBA WINS TWO MAJOR LAWSUITS INVOLVING CUBA LAKE ASSESSMENTS**

On February 18, 2011, two Decisions and Judgments in favor of the Town of Cuba were issued by Supreme Court Justice Patrick NeMoyer. Both Decisions involved real property assessment issues at Cuba Lake. Town Attorney David T. Pullen, Esq., stated that these Decisions represent a strong endorsement of the policies and practices of the Town Board and Town Assessors vindicates their actions in conducting the initial revaluation, and in maintaining the integrity of the assessment roll through the Annual Re-assessment Program. Supervisor Barbara Deming stated “The Town of Cuba remains committed to fulfilling its legal responsibilities, and its moral obligation to treat all taxpayers fairly.”

The first Decision dismissed a suit brought by Harry W. Keeley against the Assessors and other Town officers claiming the Town’s revaluation and reassessment program were conducted illegally. But the Court’s Decision ruled that the Town’s actions were not only proper, but were mandated by the relevant assessment statutes. In his 21 page Decision, Justice NeMoyer reviewed both the unique circumstances involving properties at Cuba Lake, and also the unusual background related to the 2009 town-wide revaluation, and the 2010 annual re-assessment program. The Decision specifically found that lake area properties were assessed at a lower percentage of fair market value than properties elsewhere in the Town. The Court ruled that the Assessors were thus required to re-assess the lake parcels to bring them into line with the rest of the assessments in the Town.

Supervisor Barbara Deming said “It is important that all areas of the Town be assessed at as close as possible to the same percentage of fair market value, so all pay their fair share of County, School District, and Town taxes.” But in the Keeley case, the Court found although the 2009 initial revaluation of the Town Assessors had been extremely accurate, the Board of Assessment Review had skewed the results by awarding wholesale reductions to properties located at Cuba Lake. The statistical analysis conducted by the State Office of Real Property Tax Services, based on town-wide sales data, showed Cuba Lake properties were being assessed at a weighted mean ratio of 87.89% after Board of Assessment Review reductions granted in 2009. To address that imbalance the Assessors re-assessed many of the properties in Neighborhood Code 50 (which includes Cuba Lake) in 2010, re-aligning those assessments with the reported sales data. It was that re-assessment that apparently prompted Mr. Keeley to bring his suit.

Attorney Pullen noted “The Decision and Judgment rejected every one of Mr. Keeley’s contentions. The Court ruled that the Assessors actions were not only permissible, they were mandatory.”

The second Decision upheld the dismissal of a Small Claims Assessment Review Petition by Hearing Officer Dominic Telesco. The suit by Frederick and Jane Gram challenged the

\$188,000 assessment on their cottage. Petitioners submitted an appraisal report stating that the fair market value of their property was \$267,000. However, their appraisal report then deducted the alleged value of the leasehold on State land (\$150,000), and the assessed value of a privately owned adjacent parcel of land (\$7,500). Petitioners sought a reduced assessment of \$109,500 on property their own appraiser valued at \$267,000. The Court Decision rejected all of the arguments raised by Petitioners. The Court found numerous deficiencies in the Appraisal Report, and then ruled that there was a rational basis for both the Assessment, and for the Hearing Officer's dismissal of the Petition.

Town Supervisor Barbara Deming noted that real properties located at Cuba Lake present unique assessment issues. The lake and most of the land around it are owned by the State of New York. Those State lands are exempt from taxation even though they are leased to private individuals for exclusive personal use. In recent years, some cottage owners have claimed that most of the value paid for cottages represents the value of the State land and leases, rather than the value of the taxable cottages. As a result they claim their assessments should be only a small portion of what buyers are paying sellers for cottages located at Cuba Lake. In contrast, the Town Assessors have assessed the lake cottages on leased land according to the prices being paid for the private improvements, and thus without the land value, reflecting State law that requires assessments to reflect "fair market value." The situation is further complicated by the fact the State is leasing the lake the lots to private individuals at substantially discounted prices, typically less than \$1,000 per year. The Town's attorney believes this practice violates the State Constitution and several statutes. Town Attorney David Pullen asserted that most of the assessment issues could be resolved if the State were to sell the lots at fair market value, or even lease them at their fair market value. The Town Board is in communication with State officials regarding this situation.

The recent Court Decisions represent a major step towards resolving some long-standing issues related to the assessment of lands at Cuba Lake. The Town of Cuba remains committed to treating all of its residents and taxpayers fairly and in accordance with the laws of the State.

The Court Decisions are posted and can be reviewed on the Town of Cuba web site at [cubany.org](http://cubany.org).