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 WESTCHESTER

----------X

In the Matter of the Application for a Review under Article 7 of a Tax Assessment by

HAMPSHIRE RECREATION LLC,

Petitioner,

- against -

THE ASSESSOR AND THE BOARD OF ASSESSMENT REVIEW OF THE TOWN OF MAMARONECK, AND THE TOWN OF MAMARONECK, COUNTY OF WESTCHESTER, NEW YORK

Respondents,

DECISION/ORDER

Index Nos:

14474/2011

Motion Date: 10/31/12

----------X

In the Matter of the Application for a Review under Article 7 of a Tax Assessment by

HAMPSHIRE RECREATION LLC,

Petitioner,

- against -

THE ASSESSOR OF THE VILLAGE OF MAMARONECK AND THE BOARD OF ASSESSMENT REVIEW OF THE TOWN OF MAMARONECK,

Respondents,

DECISION/ORDER

Index Nos:
9392/2010
9225/2011
55462/2012

Motion Date: 12/26/12

----------X

TOLBERT, J.

The following papers numbered 1 to 12 were considered in connection with this motion by respondents Town and Village of Mamaroneck (Town and Village, respectively) seeking summary judgment against petitioner Hampshire Recreation LLC (Hampshire):

PAPERS	NUMBERED
NOTICE OF MOTION/AFFIRMATION/	1
MEMORANDUM OF LAW	2
EXHIBITS	3
AFFIRMATION IN OPPOSITION/EXHIBITS	4
NOTICE OF MOTION/AFFIRMATION/	5
MEMORANDUM OF LAW	6
EXHIBITS	7
AFFIRMATION IN OPPOSITION/EXHIBITS	8
MEMORANDUM OF LAW	9
REPLY AFFIDAVIT	10
REPLY AFFIDAVIT	11
SUR-REPLY	12

In this tax certiorari matter, petitioner challenges the assessment of the subject property, known on the Tax Map of the Town as Section 9, Block 942, Parcel 568, and Section 4, Block 414, Lot 20, and on the Tax Map of the Village as Section 9, Block 89B, Lot 15 and 16; Block 89C, Lot 22A and 23; Block 89D, Lot 24 and 28; Block 72, Lot 17B, 17C, and 18D; Block 72, Lot 1, 2, 11, and 29; and Block 72, Lot 15, 16, 24, 25 and 28. The property is also known as and located at the Hampshire Country Club, Mamaroneck, New York. The prior owner of the premises, Hampshire Country Club (Club), commenced actions protesting Town and Village assessments for tax years 2006 through and including 2009, which matters have been settled. A separate LLC and manager of petitioner Hampshire, New World Realty Advisors (NWRA), entered into a contract of sale with the Club in April 2010, and, shortly thereafter, assigned the contract to petitioner, who executed the purchase of the subject in June 2010. Subsequently, petitioner, as the new owner of the premises, commenced the instant actions, challenging Town and Village assessments in tax years 2010, 2011, and 2012.

Respondents Town and Village now seek an Order granting summary judgment on petitioner's several petitions challenging the assessments, based on the recent (June 9, 2010) $12,000,000 purchase price of the subject, which, they allege, far exceeds the current assessment. The purchase price of the property, respondents assert, was established in a transaction alleged to have been at arm's length, in that it was advertised and negotiated through a large and respected real estate broker; both parties were

represented, throughout, by unaffiliated counsel, and no financing was taken back by the seller. Petitioner asserts, however, that the sale was abnormal, as it was motivated not only by petitioner's wish to purchase an existing, operating country club, but also by the development potential of the property. The 110 acres of the property which is located in the Village is zoned R-20 single family residential, while the 7 acres located in the Town is zoned R-30 single family residential. This mix of zoning could, according to petitioner, accommodate a minimum of 150 single family homes on ½ acre lots, making the subject far more valuable for residential development than for the operation of a Country Club/Golf Club alone. Petitioner also had mixed golf course/residential options which also added to the profitability of the property.

Respondents' Motion for Summary Judgment

Respondents assert that there are no questions of fact regarding the fact that, based upon the value of the property established at an arm's length sale, the Town and Village have under-assessed the property. Petitioner opposes the motions, arguing the existence of facts suitable for resolution at trial, including, in particular, on the issue that the transaction was abnormal, as it was motivated to a significant degree by the development potential of the property.

Upon a summary judgment motion, the movant bears the initial burden of presenting evidence, in competent form, establishing entitlement to judgment as a matter of law, and tendering sufficient evidence to eliminate any material issues of fact from the case" (*Way v. George Grantling Chemung Contracting Corp.*, 289 A.D.2d 790, 793 [3rd Dept., 2001].) Unless and until that initial burden is met, there is no need for the non-movant to come forward with "evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*id.*; *see also Rodriguez v Goldstein*, 182 A.D.2d 396, 397 [1st Dept., 1992]). In a proceeding pursuant to Article 7 of the Real Property Tax Law, summary judgment is properly granted when there is no genuine issue of material fact and the respondent is entitled to judgment as a matter of law on the issue of petitioner's entitlement to no reduction in the challenged assessment. (*Cf. See Sailors' Snug Harbor in City of New York v. Tax Commission of City of New York*, 26 N.Y.2d 444, 449 [1970]).

In *Celardo v. Bell* (222 A.D.2d 547 [2d Dept., 1995]), the Court stated:

It is axiomatic that summary judgment is a drastic remedy

> which should only be granted if it is clear that no material issues of fact have been presented. Issue finding, rather than issue determination, is the court's function (*Sillman v Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957) . If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*Museums at Stony Brook v Village of Pachogue Fire Dept.*, 146 A.D.2d 572 (1989) …

Recent Sale the Best Evidence of Value

Here, the respondents allege that the 2010, 2011, and 2012 assessments simply, and significantly, are far exceeded by the fair market value of the subject premises, when calculated by application of the applicable equalization rates in those years to the sale price of the property in 2010. It has indeed consistently been held that a party may establish "its entitlement to summary judgment by showing that the recent sale price of the property was the best evidence of the value of the property." (*See JB Park Place Realty, LLC v. Village of Bronxville*, 50 A.D.3d 689 [2nd Dept. 2008].) This Court has held similarly--"Amongst the recognized valuation methods '[t]he best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy.'" (*TBS Realty Management LLC v Village of Hillburn*, 26 Misc. 3d 1212A [Supreme Court, Rockland County, 2009], citing *JB Park Place Realty LLC v. Assessor of Village of Bronxville*, 13 Misc.3d 1233(A) (Supreme Court, Westchester County, 2006, and *Matter of FMC Corporation v. Unmack*, 92 N.Y. 2d 179, 189 [1998]); see also *Matter of 325 Highland LLC v. Assessor of the City of Mount Vernon*, 5 Misc. 3d 1018(Supreme Court, Westchester County, 2004.)

As the Court noted in *Plaza Hotel Associates v. Wellington Associates, Inc.*, 37 N.Y. 2d 273, 277 (1975),

> The rule has evolved and is now well settled "that the purchase price set in the course of an arm's length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the 'highest rank' to determine the true value of the property at that time."

Similarly, in *Matter of Allied Corp. v. Town of Camillus*, 80 N.Y. 2d 351, 356 (1992), the Court stated "The best evidence of

value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy"). (*See also Matter of Reckson Operating Partnership, L.P. v. Assessor of Town of Greenburgh*, 289 A.D. 2d 248 (2d Dept. 2001)--"The Supreme Court properly granted the respondents' motion for summary judgment, since they established that the recent sale price of the property was the best evidence of value of the property"; *Matter of Robert Lovett v. Assessor of Town of Islip*, 298 A.D. 2d 521 (2d Dept. 2002)-"The Supreme Court correctly determined that the 1994 sale price of the subject property was the best evidence of its value".)

Here, as set forth in greater detail above, respondents argue that petitioner participated in an arm's length transaction in purchasing the subject premises in June 2010, as evidenced by the fact that petitioner had no apparent business dealings with the principals of the former owner, prior to the sale transaction; that negotiations were conducted through a large and respected real estate broker; that both parties were represented, throughout, by separate counsel; and that no unusual financing arrangements were involved. Respondent thus argues that a sale of the premises for $12,000,000.00 under the aforesaid circumstances, at virtually the same time as the taxable status date for the 2010 tax year, and less than 12 and 24 months, respectively, prior to the taxable status dates for the 2011 and 2012 tax years, is the best evidence of the value of the property during the tax years at issue herein.

Petitioner's initial rejoinder to respondents' properly-submitted proof on the issue of the probative value of the sale is to state, via affidavit of the principal of NWRA, that motivating factors in the calculus over whether to offer the purchase price of $12,000,000 to the Club, were whether the golf course could be profitably operated on such sale terms, and under what circumstances, if any, the development potential of the site (up to 150 single-family homes on ½ acre lots) could be substituted for or combined with the operation of the golf course. While petitioner characterizes such a calculus as "abnormal", in fact it is best described as **normal**, for nearly every buyer, in the Court's experience, particularly sophisticated ones such as petitioner, who are purchasing a significant property with development potential outside of its current use, will consider all of the ramifications of a purchase of real property, including whether the current use may not be the most profitable one. Nothing makes such consideration by a willing buyer "abnormal."

As this Court noted in *Matter of Carroll v Assessor, City of Rye*, 2012 NY Slip Op 52164(U) (Supreme Court, Westchester County, November 21, 2012, citing to *City of Birmingham v. Kramer*, 26 A.D.2d 726 [3rd Dept. 1966]), motivation (in *Carroll*, the buyer's intent on purchasing improved property) to demolish improvements on a property after the purchase, does not permit valuation of the property as if it were vacant, and thus by highest and best use. Here, unless the subject property was vacant, it must be valued, whether by use of a recent sale, or any other recognized valuation methodology, by reference to the use to which it is being put at the time of the sale, namely a golf course. Hence it would in fact be inappropriate to value the subject for tax purposes in some way other than as a golf course.

Here, petitioner also provides an affidavit from Jeffrey Dugas, an appraiser recognized by the Court to have been a golf course appraiser for over two decades, to have thereby appraised over one thousand golf courses and country clubs during that time, and therefore to be among the pre-eminent appraisers of such establishments in the nation. Dugas had previously appraised this property, in 2010, incident to the former owner's RPTL Article 7 challenge to tax years 2006 through and including 2009, which challenges were subsequently resolved. Dugas also, following the 2010 sale noted above, revised his 2010 appraisal to consider the sale. Dugas opines that, while the highest and best use of the property may very well be for residential development, as an already developed parcel, he was required to appraise the subjet as of its use on the tax dates at issue then, and now, namely as a golf and country club, and in a manner consonant with *Matter of New Country Club of Garden City* (Supreme Court, Nassau County, Rossetti, J., June 4, 1991), namely by a specialized income analysis and not solely by application of a recent sale of the premises. Respondents, despite ample opportunity to do so, have failed to rebut Dugas' expert opinion, either by appraisal expert or precedential authority, that the proper manner of valuation of a golf course, even in the wake of a recent sale, is pursuant to the income capitalization method set forth in *New Country Club*.

The Court thus finds, regarding respondents' motions, that, at the outset, they have met their initial burden, by demonstrating entitlement to judgment as a matter of law, based on the arm's length nature of the sale, the recent nature of the sale, the lack of abnormality in the sale, and the price at which the property was sold, demonstrating a value far in excess of the assessment. However, when viewing petitioner's properly submitted proof in a light most favorable to it, and upon

bestowing the benefit of every reasonable inference to them (*Boyce v. Vasquez*, 249 A.D.2d 724, 726 [3d Dept., 1998]), based on the abject failure of respondents to impugn the expert opinion of petitioner's appraiser on the proper method of valuation of a golf and country club, material issues do indeed exist as to the proper assessed value of the subject premises in the tax years at issue.

Upon the foregoing papers, it is hereby

ORDERED, that the motion by respondents for summary judgment against respondents is hereby denied.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
February 4, 2013

_____
HON. BRUCE E. TOLBERT, J.S.C.

bestowing the benefit of every reasonable inference to them (*Boyce v. Vasquez*, 249 A.D.2d 724, 726 [3d Dept., 1998]), based on the abject failure of respondents to impugn the expert opinion of petitioner's appraiser on the proper method of valuation of a golf and country club, material issues do indeed exist as to the proper assessed value of the subject premises in the tax years at issue.

Upon the foregoing papers, it is hereby

ORDERED, that the motion by respondents for summary judgment against respondents is hereby denied.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
February 5, 2013

_____
HON. BRUCE E. TOLBERT, J.S.C.