

**Matter of Hampshire Recreation LLC v Assessor and
Bd. of Assessment Review of the Town of
Mamaroneck**

2013 NY Slip Op 33018(U)

September 23, 2013

Sup Ct, Westchester County

Docket Number: 14474/2011

Judge: Bruce E. Tolbert

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
Present: HON. BRUCE E. TOLBERT
J.S.C.

FILED AND ENTERED
September 23, 2013
WESTCHESTER COUNTY CLERK

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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

DECISION AND ORDER
Index No.: 14474/2011

Motion Date:

Respondents.

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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,

DECISION AND ORDER
Index Nos.: 9392/2010
9225/2011
55462/2012

Motion Date:

Respondents.

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TOLBERT, J.

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, an 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.

The recognized purpose of the instant litigation is to have this Court rule on the Petitioner's claim of over valuation of the subject property by Respondents.

Petitioner's urge the Court to accept and adopt the estimated values presented by their appraisal and testified to by their Appraiser. Respondents contend that the admitted recent sale of the subject property is the best indicator of market value, thus full value.

Prior to trial, Petitioners timely filed and exchanged an appraisal report. Respondents timely reported to the Court and opposing counsel that they chose not to exchange an appraisal report but instead would rely upon the recent subject property sale price as their proof on value.

Initially, the Court determines that Petitioners have met their first burden and have overcome the presumption of the validity of the assessments under review. It is recognized that the standard of substantial evidence when used in this regard in tax certiorari proceedings is a minimal one (*Matter of FMC Corp. v. Unmack*, 92 NY2d 179 (2008)). The evidence submitted by Petitioners is based upon sound theory and objective data.

Prior to trial in these matters, Respondents moved for Summary Judgment arguing that as a matter of fact and law, the sale price of the subject property was the best indicator of value and that the assessments were not excessive. This Court denied the motion, but in so doing stated in part:

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." (*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 Mic.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 (1990), 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".

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 (3 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.

The question that this case presents is whether the recent sale of the subject property is appropriate to determine valuation, versus an otherwise accepted methodology to assess the property. The Court has found no clear authoritative ruling on this question.

Indeed, the case law clearly states that the best evidence of value is a recent sale of the subject. This Court has heretofore accepted that the sale was recent and the transaction was arms length and not abnormal. The authoritative case law also notes that absent such a finding there are three generally accepted methods to value property. Petitioner does establish in this Court's opinion, that the methodology employed by their expert is an acceptable method to estimate the value of golf courses.

It is worth noting that Respondents have not sought to value this property on any future or potential use. They sought to value it based upon a purchase price paid by Petitioner to use, according to Petitioner's witness, initially as a golf course. A use to which it was still put as of date of trial, some three years post purchase. In addition, the record does not support a finding that any formal applications have been made to any entity or entities for any permits or approvals to utilize this property for some use other than a golf course. This fact gives credence to the value of this property to Petitioner, as a golf course as being the price Petitioner negotiated and willingly paid.

Petitioners urge this Court to draw a negative inference that Respondent's appraisal, if completed, would not support a value in proximity to the sale price. While this Court understands that it may draw such an inference, it is not, however, required to do so. Respondents, rightly or wrongly have adopted their strategy to use the recent, arms length sale of the subject, as the best indicator of value. Although Respondents have proffered, no expert proof estimating value, they have proffered proof by a methodology that has been found acceptable; that being the sale price of the subject property. This Court does not deem it appropriate to draw any negative inferences from Respondents not exchanging and filing an appraisal.

The Court therefore determines that the recent sale of the subject property, by way of an arms length transaction, that was not abnormal in any way, is the appropriate and best indicator of value.

Therefore, it is hereby:


ORDERED, that the petition challenging the Village of Mamaroneck's 2012 assessment is dismissed; and be it, hereby further

ORDERED, that the petitions challenging the assessments made by the Village of Mamaroneck for the years 2010 and 2011 and the assessments made by the Town of Mamaroneck for the years 2011 and 2012 be granted but only to the extent of directing the Respondents to (i) adjust those assessments by multiplying \$12,000,000 by the municipalities'

respective equalization rates for those years, (ii) correct the Village of Mamaroneck's assessment rolls for the years 2010 and 2011 accordingly, (iii) correct the Town of Mamaroneck's assessment rolls for the years 2011 and 2012 accordingly and (iv) refund any overpayment of taxes resulting from these adjustments with interest. The rates herein stated were stipulated to by the parties prior to trial; and it is hereby further

ORDERED, that no costs are awarded.

The foregoing shall constitute and be the Decision and Order of this Court.


Honorable Bruce E. Tolbert
Justice of the Supreme Court

Dated: September 23, 2013
White Plains, New York

To: Jay M. Herman, Esq.
Herman Katz Cangemi & Clyne, LLP
Attorneys for Petitioner
538 Broadhollow Road - Suite 307
Melville, NY 11747
Fax: 631-501-5012

Joanna C. Feldman, Esq.,
McCullough, Goldberg & Staudt, LLP
Attorneys for Respondents
1311 Mamaroneck Avenue, Suite 340
White Plains, NY 10601
Fax: 914-949-2510

William Maker, Jr., Esq.
Attorney for Respondent, Mamaroneck Town Center
740 West Boston Post Road
Mamaroneck, NY 10543
Fax: 914-381-7809