

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

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

HAMPSHIRE COUNTRY CLUB,

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,

-----X

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

HAMPSHIRE COUNTRY CLUB,

Petitioner,

- against -

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

Respondents,

-----X

LaCAVA, J.

DECISION/ORDER

Index Nos:
18681/06
18813/07
20461/08
22319/09

Motion Date:
9/29/10

DECISION/ORDER

Index Nos:
6267/06
6712/07
8275/08
7213/09

Motion Date:
9/29/10

The following papers were considered in connection with this application by respondents for an Order compelling compliance by petitioner with previously-served Notices seeking Disclosure:

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIDAVIT/EXHIBITS	1
AFFIDAVIT IN OPPOSITION	2
NOTICE OF MOTION/AFFIRMATION/EXHIBITS	3
AFFIDAVIT IN OPPOSITION	4
REPLY AFFIRMATION/EXHIBITS	5

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, also known as and located at the Hampshire Country Club, Mamaroneck, New York. Respondents Town of Mamaroneck (Town) and Village of Mamaroneck (Village) seek an order granting them discovery relating to a recent sale of the property, by petitioner to a third party.

While the instant matter was being readied for trial, including by the preparation and timely pre-trial exchange of appraisal reports, petitioner disclosed that the subject property had been offered for sale, and that several parties had expressed interest in the property. Subsequently, respondents assert, a sale of the premises was in fact negotiated, for \$12,100,000.00, and a closing also occurred, in or about early June of 2010. Consequently, the Town and the Village both served notice upon counsel for petitioner pursuant to CPLR 3120, seeking disclosure of the details of the sale. In each case, petitioner declined to comply with the disclosure notice, and each has now moved, seeking said disclosure. Petitioner opposes the motion for several reasons, including the untimeliness of the request (i.e. its nearness to the scheduled trial of this matter).

SALE OF SUBJECT PROPERTY AS BEST EVIDENCE OF VALUE

Respondents seek leave to discover the details of the purported June sale of the subject premises. This Court has frequently held that it is well-settled under New York law 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." *Plaza Hotel Assoc. v. Wellington Assoc.*, 37 N.Y.2d 273, 277 (1961); *F.W. Woolworth Co. v. Tax Comm. of City of New York*, 20 N.Y.2d 561, 565 (1967); *Matter of Grant v. Srogi*, 52 N.Y.2d 496, 511 (1981); *Matter of Allied Corp.*

v. Town of Camillus, 80 N.Y.2d 351, 356 (1992). Where, on the other hand, there exists a "significant and unexplained disparity between the purchase price of the subject property and the prices for comparable properties," a sale may be deemed to be "abnormal." *Matter of Kishor Patel-Fredonia Motel, Inc. v. Town of Ponfret*, 252 A.D.2d 943 (4th Dept. 1998). The burden of persuasion falls upon the party alleging an "abnormality." See, e.g., *Plaza Hotel Assoc.*, 37 N.Y.2d at 277. Since the items noticed by the Town and the Village for Discovery and Inspection by petitioner relate directly to the facts and circumstances of the recent sale of the subject premises, then the items are material and relevant to the factual issues in this tax certiorari matter. (Cf *Miriam Osborn Memorial Home Association v. City of Rye, et al.*, 8 Misc.3d 1008 [A] {Supreme Court, Westchester County, 2005}).

DISCOVERY IN TAX CERTIORARI PROCEEDINGS

CPLR 3101(a) provides:

a) **Generally.** There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:

(1) a party, or the officer, director, member, agent or employee of a party;

(2) a person who possessed a cause of action or defense asserted in the action;

(3) a person about to depart from the state, or without the state, or residing at a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief that he or she will not be able to attend the trial, or a person authorized to practice medicine, dentistry or podiatry who has provided medical, dental or podiatric care or diagnosis to the party demanding disclosure, or who has been retained by such party as an expert witness; and

(4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required.

However, it is well-established that proceedings commenced pursuant to RPTL Article 7 are Special Proceedings as provided-for

in CPLR Article 4, and thus are governed by the discovery rules set forth in CPLR §408. (See *Xerox Corp. V. Duminuco*, 216 A.D.2d 950 [4th Dept. 1995]--"Because this proceeding was commenced pursuant to RPTL Article 7, disclosure is governed by CPLR 408, which requires leave of court."

CPLR §408 provides:

§408. Disclosure. Leave of court shall be required for disclosure except for a notice under section 3123.

While the Court is loath to permit discovery at this late date, a recent sale of the subject is the best evidence of value for the property, absent an abnormality, and the details of the sale may shed considerable light on whether the sale does properly reflect the current market value of the property. If so, respondents' appraisers' should have access to those details, in order to deal with this post-appraisal sale in a supplemental appraisal, and thereafter at trial. Consequently, so long as the applications were promptly made for the sought-after information, upon discovery that the sale had occurred, the Court will direct petitioner to comply with the previously-served Discovery Notices.

Upon the foregoing papers, it is hereby

ORDERED, that the motions by respondents for Orders granting leave of Court pursuant to CPLR § 408 and Article 31, to compel production by petitioner of disclosure relating to the recent sale of the subject property, are granted, to the extent that petitioner is directed to comply with the previously-served Demands for Discovery and Inspection, relating to the details of the 2010 sale of the subject property, within 30 days of the instant Order.

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

Dated: White Plains, New York
November 16, 2010

HON. JOHN R. LA CAVA, J.S.C.

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