Joanne Broom Revocable Trust

v.

Town of North Hampton

Docket Nos.: 25668-10PT/26415-11PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2010 and 2011 abated assessments of $7,710,600 and $7,639,600 on Map 002/Lot 036, 10 Runnymede Drive, a single-family home on 15.7 acres of land (the "Property"). These two appeals were consolidated for hearing and decision. For the reasons stated below, both appeals are granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessments were higher than the general level of assessment in the municipality. Id. The board finds the Taxpayer carried this burden.

The Taxpayer, a "Trust," argued the assessments were excessive because:

(1) the Taxpayer purchased the Property in December, 2010 by submitting a winning bid (submitted by Mr. Chris Broom, a beneficiary of the Trust) in a public auction held in October, 2010;

(2) this auction was professionally advertised, managed and conducted (by Grand Estates Auction Company; see Taxpayer Exhibit No. 1, Tab 6) and occurred after the seller had actively marketed the Property for approximately 300 days through a reputable broker (Landvest/Christie's Great Estates);

(3) the Trust paid a total of $4,138,750 for the Property ($3.85 million bid price and a 7.5% buyer's premium, as indicated in Taxpayer Exhibit No. 1, Tab 7);

(4) the Taxpayer obtained three appraisals (see Taxpayer Exhibit No. 1, Tabs 3, 4 and 5) and then obtained a mortgage for $3 million from Lake Sunapee Bank in order to finance the purchase;

(5) the "Stanhope Appraisals" prepared for tax years 2010 and 2011 (Taxpayer Exhibit No. 1, Tabs 1 and 2), by Peter E. Stanhope of the Stanhope Group LLC, estimate the market value of the Property was $4.3 million and $3.65 million as of April 1, 2010 and April 1, 2011, respectively, relying on the sales comparison approach, are the best evidence of market value, and are consistent with the estimates in the other three appraisals; and

(6) the assessments should be abated to the values estimated in the Stanhope Appraisals adjusted by the level of assessment in each tax year.

The Town argued the assessments, as abated, were proper because:

(1) the Town hired "Vision" (Vision Government Solutions, Inc.) to perform a Town-wide revaluation in tax year 2008 which resulted in the values reflected on the assessment-record cards ("ARC's") for each property;

(2) an appraisal prepared by Dale M. Gerry, ASA, of Shurtleff Appraisal Associates Inc. (the "Gerry Appraisal," Municipality Exhibit A, Tab D), prepared in response to the Taxpayer's abatement applications, estimates the market value of the Property was $7.1 million as of April

1, 2010 and is a more credible and reliable indicator of the value of the Property than any of the Taxpayer appraisals;

(3) the Town inspected the Property and abated the assessments at the municipal level from $9,463,200 in 2010 and $9,353,800 in 2011 (as shown in Municipality Exhibit A, Tab B);

(4) the Town's abatements on the Property for 2010 and 2011 were based on an inspection of the Property and the estimate of market value in the Gerry Appraisal; and

(5) no further abatements are warranted because the Taxpayer did not meet its burden of proving disproportionality.

The parties agreed the levels of assessment in the municipality were 108.6% and 107.6% in tax years 2010 and 2011, respectively – the median ratios calculated by the department of revenue administration. At the January 7, 2014 hearing of these appeals, the parties' attorneys requested and were granted leave to file memoranda of law and requests for findings of fact and ruling of law ("Requests") by January 17, 2014. The board has reviewed all of these pleadings and has responded to the Requests in Addendum A attached hereto.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer met its burden of proving disproportionality because the most reasonable estimate of the market value of the Property in tax years 2010 and 2011 was $5.5 million, rounded; when adjusted by the level of assessment in each year, the assessments should be abated to $5.973 million in 2010 and $5.918 million in 2011. The appeals are therefore granted for the following reasons.

In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119

N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The parties recognize the burden of proving disproportionality rests with the Taxpayer: in order to obtain tax abatements, the Taxpayer must show the market value of the Property in each tax year, adjusted by the level of assessment, was lower than the assessed value. [See, e.g., the Taxpayer's "Post-Trial Memorandum of Law" (hereinafter, "Taxpayer's Memorandum"), p. 7 and the Town's Request No. 6.]

The board heard and decided a tax year 2008 abatement appeal involving the prior owners of the Property: Goldstein v. Town of North Hampton, BTLA Docket No. 24345-08PT (July 13, 2011) (included in Municipality Exhibit A, Tab C). In Goldstein, the board noted (at p. 4):

> Assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). In order to prevail in a tax abatement appeal, the Taxpayers have the burden of proving the market value of the Property as of the assessment date was less than the assessed value adjusted by the level of assessment in the Town (97.1%). The board has the discretion to evaluate and determine whether any piece of evidence is indicative of market value. Cf., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980).

In Goldstein, some evidence was presented describing the Property, including photographs and details regarding the extensive renovations made at a total cost of over $16.8 million, along with the nature of the "absolute auction" conducted in 2010 which was the means by which the Taxpayer purchased the Property. (See Goldstein, pp. 2 and 4; see also Town's

Request No. 3.) No appraisals of any kind, however, were submitted in Goldstein and the board found no other credible evidence sufficient to meet the burden of proving disproportionality.[1]

In contrast, in these 2010 and 2011 appeals the Taxpayer has presented multiple appraisals and other evidence to support its claims of disproportionality, as well as additional information about the auction and the actual bidding that occurred. Taxpayer Exhibit No. 1 contains the two Stanhope Appraisals prepared specifically for these tax appeals and three other appraisals prepared to obtain financing, along with details regarding the auction.

The parties agree the Property is on a large lot with panoramic salt marsh views and distant ocean views (cf. Town Request No. 1), considerable privacy, a very desirable location and is improved with features designed to appeal to buyers at the "high-end" of the market. (Many details regarding the quality of these improvements are included in the Gerry Appraisal, pp. 13-37; see also the photographs in the Stanhope Appraisals.)

The board considered the marketing history of the Property once the Goldsteins decided to sell. This marketing history is detailed in the Goldstein Decision (p. 2) and the Gerry Appraisal (pp. 43-44) and is not in dispute. The Goldsteins originally listed the Property for sale in January, 2010 for $11.5 million and then reduced their asking price to $7.9 million in June, 2010. (See Town Request No. 4.) The Goldsteins cancelled this listing on July 12, 2010 and decided to market the Property using an auctioneer (Grand Estates Auction Co. of North Carolina). (For reasons that are not clear, the Stanhope Appraisals make no mention of the public auction or the prior marketing history of the Property.) The Gerry Appraisal (p. 44) notes

[1] The board does not agree with the Town's assertion that the "absolute auction sale" cannot be considered because this "issue is barred under doctrines of res judicata and collateral estoppel." (See Town's Memorandum, p. 5.) The Goldstein appeal referenced above did not involve the same Taxpayer or the same tax years and the Taxpayer should not be precluded from presenting arguments pertaining to the relevance of the December, 2010 auction. In addition, the board determined the 2010 auction had little bearing on the 2008 appeal as it occurred more than 2 ½ years after the April 1, 2008 assessment date.

that the marketing time for the Property was relatively short when compared to those typical for high-end properties.

The board finds these and other factors support a finding that the sellers were atypically motivated. The board further finds when a property has unique features designed to appeal to a high-end buyer, the pool of potential buyers is relatively small and therefore longer exposure to the market may be necessary in order to obtain a price reflective of market value.

The parties disagree regarding whether any weight can be placed on the price obtained in an "absolute auction." In an absolute auction, the buyer does not "reserve" a minimum price and is obligated to sell to the highest bidder, regardless of how low or high that bid might be. There is case law to the effect that auction prices are less reflective of market value than a price arrived at using more conventional marketing, such as a broker listing on an "MLS" (multiple listing service). The Town's Memorandum (pp. 6-7) cites Society Hill at Merrimack Condo. Assn. v. Town of Merrimack, 139 N.H. 253 (1994), for the proposition that a "market auction sale is not an indicator of market value." A closer reading of Society Hill indicates, however, that a fact-finder has discretion to consider whether or not to consider such evidence: as the supreme court specifically stated, "This court need not decide whether an auction of real estate can ever be used as an indicator of fair market value." Id. at p. 255-56.

The Taxpayer's Memorandum (pp. 8-11), for its part, argues the October, 2010 auction "met all essential elements of a fair market transaction" and therefore should be given some weight in determining market value. (Cf. Taxpayer Request Nos.: 3-6.) The Taxpayer cites Foley v. Wheelock, 157 N.H. 329, 334 (2008),[2] in support of its arguments, as well as Society

[2] In Foley, the supreme court affirmed a probate court decision that the price achieved at an auction for an office condominium ($140,000) was reflective of "fair market value" and that other forms of marketing "would cause unnecessary cost and delay" in selling the property. (Id. at 332.) The supreme court explained the differences between an "absolute" auction and one held "with reserve." (Id. at 334.) The auction in Foley, unlike the auction is this appeal, was one with reserve and was not an absolute auction. The supreme court held that it was a "sustainable exercise of discretion" for the probate court to utilize the auction price. (Id. at 335.)

Hill and other cases. Based on its own review of the case and other authorities, (cf. Taxpayer Request No. 23), the board finds it is not precluded from giving some evidentiary weight to the auction price and has done so in its deliberations.

Full weight is not warranted, however, because the evidence suggests the Goldsteins had atypical motivations for selling the Property and probably did not have the patience to keep the Property on the market for a sufficient length of time to achieve a reasonable market value. They may have initially set an unrealistic asking price when they marketed the Property initially through a broker and then chose an absolute auction as the vehicle for selling the Property rather than one with a reserve price. While the Taxpayer presented credible evidence that the auction was professionally conducted and there were other active bidders, the board finds these and other facts make it less likely the auction price accurately reflects market value.[3]

The board evaluated the comparability of the many sales utilized to some degree in the Stanhope Appraisals and the Gerry Appraisal. The board does not agree the Weston, Massachusetts sales used in the Gerry Appraisal have probative value because they lack sufficient comparability to the Property. (See Town Request No. 18.) The board finds the two most comparable sales are: 518 Newcastle Avenue, Portsmouth, which sold for $6.2 million in July, 2011; and 70 Ocean Boulevard in the Town, which sold for an effective price of $5.8 million (after deducting the indicated value of a second lot from the total sale price of $7.9 million). In his testimony, Mr. Stanhope stated 518 Newcastle Drive was the "best comparable." He indicated this comparable was also substantially improved (like the Property) at a cost of $15 to $20 million. The two appraisers agreed 70 Ocean Boulevard was a useful comparable and

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[3] As noted in Goldstein (p. 5), one of the distinguishing characteristics of an auction is that the bidder must be prepared to make a "cash" purchase: there are typically no financing contingencies. All other things being equal, this facet of an auction is likely to reduce the market potential compared to other forms of selling a property, even a property likely to appeal to "high end" buyers with relatively large financial means.

agreed the value of the second lot should be deducted in their respective analyses. Both appraisers made substantial adjustments to each of these two sales for location, size and other factors to develop their own indications of value relying on these sales and other data. The board, however, does not agree with the magnitude of these adjustments and finds, when these two sales are reasonably adjusted, they indicate a value in the range of $6 million. The board further finds some weight should also be given to the other evidence presented, including the auction and the other appraisals submitted by the Taxpayers. Although this evidence no doubt has limitations of its own, the board finds it supports a downward adjustment to the value conclusion indicated by focusing on just these two sales.

Using its judgment and experience, and weighing all of the evidence presented, the board finds the most reasonable indication of market value to be $5.5 million, rounded. This estimate is lower than the market value assertions of the Town (based on the Gerry Appraisal estimate of $7.1 million) and higher than the Taxpayer's assertion (based on the Stanhope Appraisals' estimates of $4.3 million in 2010 and $3.65 million in 2011). The $5.5 million reflects the board's judgment, placing the most weight on the two sales discussed above and some weight on the auction, along with the Taxpayer appraisals.

The board further finds that no change in value would likely have occurred between 2010 and 2011. In this respect, the board is unpersuaded by the lower value indication for 2011 arrived at by Mr. Stanhope (approximately 15% less than his 2010 estimate). The board finds such a diminution in value is not credible and is not supported. To the contrary, after considering the evidence as a whole, the board finds the Property would, in all likelihood, have the same market value in each year.

If the taxes have been paid, the amount paid on assessed values in excess of $5.973 million in 2010 and $5.918 million in 2011 shall be refunded with interest at six percent per

annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered 2011 abated assessment of $5.918 million for subsequent years. RSA 76:17-c, I and II.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") within thirty (30) days of the clerk's date below, <u>not the date this decision is received</u>. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Albert F. Shamash, Member

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Theresa M. Walker, Member

Addendum A

The proposed findings of fact and conclusions of law filed by each party are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in **bold face**. With respect to the board's responses, "neither granted nor denied" generally means one of the following.

a. the request contained multiple requests for which a consistent response could not be given;

b. the request contained words, especially adjectives or adverbs, that made the request overly broad or narrow so that the request could not be granted or denied;

c. the request contained matters not in evidence or not sufficiently supported to grant or deny;

d. the request was irrelevant; or

e. the request is specifically addressed in the decision.

TAXPAYER'S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

1. On December 9, 2010, after an auction on November 9, 2010, the Trust purchased 10 Runnymede Drive (the "Property") in North Hampton, New Hampshire (the "Town") for a total contract price of $4,138,750. That amount included an auction bid amount of $3,850,000 and a 7.5% buyer's premium of $288,750.

Granted.

2. The only motivation for the former owners, Andrew L. and Karen Goldstein (the "Goldsteins"), in selling the Property was to relocate to be closer to family on the west coast. They did not have to sell the Property, they were not behind on their mortgage, and they were free to set an auction reserve.

Neither granted nor denied.

3. The costs of marketing and holding the auction were approximately $114,343.51.

Granted.

4. Grand Estates Auction Company of Charlotte, North Carolina ("Grand Estates") marketed the Property extensively, both domestically and internationally and generated significant interest, including 330 inquiries and 145 groups who previewed the Property prior to the auction.

Granted.

5. Grand Estates' efforts ultimately produced a well-attended and highly competitive auction, with 16 pre-qualified bidders, each of whom had to provide a deposit of $100,000 in certified funds in order to take part.

Neither granted nor denied.

6. The auction produced a free and fair market and the sale price of $4,138,750 is a valid indicator of the Property's market value at the time of sale.

Neither granted nor denied.

7. Three independent appraisals were performed in connection with financing the purchase of the Property and produced appraisal values of $4,400,000 as of November 18, 2010, $3,900,000 as of November 29, 2010 and $3,409,000 as of December 2, 2010. Each of these appraisals was developed in conformance with standard appraising practices and principles and is credible and reliable as of its stated date.

Denied.

8. The Trust has further provided market value appraisals as of April 1, 2010 and April 1, 2011 in the amounts of $4,300,000 and $3,650,000, respectively. These appraisals were developed in conformance with standard appraising practices and principles and are credible and reliable as of their stated dates.

Denied.

9. The comparable sales method is the most appropriate method of appraisal and the income and cost reproduction methods are not reliable indicators of value for the Property's market segment.

Granted.

10. As of April 1, 2010, the Town assessed the Property at $9,463,200. The applicable equalization ratio for 2010 was 108.6%. As of April 1, 2011, the Town assessed the Property at $9,353,800. The applicable equalization ratio for 2011 was 107.6%.

Neither granted nor denied.

11. The Town provided an appraisal on or about February 29, 2012 with an appraised value of $7,100,000 as of April 1, 2010. Thereafter, on or about December 17, 2012, the Town lowered the Property's assessment for 2010 to $7,710,600 and for 2011 to $7,639,600 based solely on that $7,100,000 appraisal and the applicable equalization ratios of 108.6% and 107.6%, respectively.

Granted.

12. The Town's appraisal as of April 1, 2010 is flawed and unreliable.

Neither granted nor denied.

13. The Town has not provided an appraisal as of April 1, 2011, and it has not made any determination or presented any credible evidence of a fair market value for the Property as of April 1, 2011.

Neither granted nor denied.

14. RSA 75:1 provides that all taxable property shall be appraised by the Selectmen at its market value, which means "the property's full and true value as the same would be appraised in payment of a just debt due from a solvent debtor." RSA 75:1 (2012).

Granted.

15. To show that an abatement is justified, the Trust has the burden of proving, by a preponderance of the evidence, that the assessment placed on the Property was disproportionately higher in relation to its true value than as to other property in general in the taxing district. *See, e.g.*, *Wise Shoe Co. v. Town of Exeter*, 119 N.H. 700, 701 (1979); *Appeal of Town of Sunapee*, 126 N.H. 214, 218 (1985).

Granted.

16. The Trust may show that its property is being taxed disproportionately by "establishing the fair market value of the property for the tax years in question, comparing it to the assessed value, and establishing by agreement or otherwise, the equalization ratio used in the assessment of the property in the taxing district during the disputed years." *See Wise Shoe Co.*, 119 N.H. at 701.

Granted.

17. The New Hampshire Supreme Court has expressed serious reservations and misgivings about the reproduction cost method. "The reproduction cost method to which appraisers resort when valuation by the other two methods is not feasible [citation omitted] tends to inflate fair market value by setting a price that often exceeds the level of actual market price negotiations [citation omitted]." *Manchester Housing Auth. v. Reingold*, 130 N.H. 598 (1988).

Neither granted nor denied.

18. "The sale price of a piece of property is evidence of its value unless the court finds on evidence that there was not a fair market." *Berthiaume v. City of Nashua*, 118 N.H. 646, 648 (1978)*;see also Poorvu v. City of Nashua*, 118 N.H. 632, 633 (1978) (citation omitted).

Neither granted nor denied.

19. Numerous factors must be considered when determining whether the sale price is an indication of fair market value, including "whether the sale was an arm's length transaction, whether additional incentives were offered, whether unusual duress existed against either the buyer or the seller, and whether some relationship existed between the buyer and seller that would influence the sale price." *Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack*, 139 N.H. 253, 255-56 (1994).

Granted.

20. An arm's length transaction is "[a] transaction freely arrived at in the open market, unaffected by abnormal pressure or by the absence of normal competitive negotiation as might be true in the same of a transaction between related parties." *Appeal of Lakeshore Estates*, 130 N.H. 504, 508 (1988) (citations omitted).

Granted.

21. New Hampshire has recognized that "[a]n auction is a public sale of property to the highest bidder . . . and the goal is to obtain the best financial return for the seller by free and fair competition among bidders." *Foley v. Wheelock*, 157 N.H. 329, 334 (2008) (citation omitted) (affirming sale of property in partition action at less than reserve price set at auction where reserve price was not met).

Neither granted nor denied.

22. Where an auction has a number of qualified bidders in attendance, and the auction is sufficiently advertised, it "suggests a 'free and fair competition,' [citation omitted] took place to achieve the greatest possible sale price." *Id*. at 336.

Neither granted nor denied.

23. The New Hampshire Department of Revenue Administration ("DRA"), in its Exclusion Code 99, allows that an auction sale may be a valid market sale for inclusion in the DRA's computation of equalization rates if: 1) it was well advertised; 2) it was well attended; and 3) the seller was freely able to set a reserve. *See* DRA Exclusion Code 99.

Granted.

24. The Property's fair market value as of April 1, 2010 is $4,300,000 and its fair market value as of April 1, 2011 is $3,650,000. Those fair market values produce a tax assessment value of $4,669,800 for 2010 (108.6% equalization ratio) and a tax assessment value of $3,927,400 for 2011 (107.6% equalization ratio).

Denied.

25. The Trust has carried it burden of proving that the Town's assessments for 2010 and 2011 were disproportionate to the general level of assessment in the Town.

Neither granted nor denied.

TOWN'S REQUEST(S) FOR FINDINGS OF FACT AND RULINGS OF LAW

1. The Taxpayer owns property in the Town of North Hampton that is 15.7 acres in size with approximately 150 feet of frontage on Runnymeade Drive with extensive, panoramic views across a salt marsh with distant views of the Atlantic Ocean.

Granted.

2. Located on the property is a main house with approximately 15,681 square feet of above-grade living area. The main house contains twenty-nine (29) rooms, including but not limited to five (5) bedrooms, (11) bathrooms, an indoor pool, gymnasium, movie theater, and numerous walkout patios and decks throughout. The main house contains various custom-designed features including, but not limited to, built-in appliances and handmade cabinetry, extensive molding and trim, and wood paneling.

Neither granted nor denied.

3. The subject property sold previously for $1,600,000 in 2004, after which the buyers spent approximately $16,000,000-17,000,000 to substantially renovate the improvement by demolishing a significant portion of the then existing structure and rebuilding the residence that currently exists.

Granted.

4. The subject property was later listed in January 2010 for $11,500,000 until the listing price was dropped in June 2010 to $7,900,000, and after thirty-five (35) days the property was advertised as an absolute auction sale. The property subsequently sold at auction in December 2010 for $3,850,000 (plus a 7½ percent buyer's premium).

Granted.

5. The Taxpayer applied for abatements in tax years 2010 and 2011, which were subsequently granted by the Board of Selectmen. As a result of these abatements, the assessed value for 2010 went from $9,463,200 to $7,710,600, and the value for 2011 went from $9,353,800 to $7,639,600.

Granted.

6. The burden of proof is on the taxpayer to prove that its property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the Town. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). "Under our construction of the taxing statutes, taxable value is the market value, or the price which the property will bring in a fair market, after reasonable efforts have been made to find the purchaser who will give the highest price for it." (brackets and quotations omitted) Public Service Company of New Hampshire v. Town of Seabrook, 126 N.H. 740, 742 (1985). "When property is appraised, all factors relevant to its value should be considered, Paras v. Portsmouth, 115 N.H. at 67-68, including special architectural features and equipment." 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 286 (1982); see also Fusegni v. Portsmouth Housing Authority, 114 N.H. 207, 208 (1974) ("Three-story colonial house, known as Sherburne House, was originally built in 1725 as a single-family residence. … Many of the colonial features of the house have been preserved in excellent condition, including scroll work above the entryway and windows, wood paneling, wide floor boards and eight (8) fireplaces, at least one of which is constructed of Italian marble."). "There is no rigid formula which can be used to arrive at full and true value … . Rather, all relevant factors must be considered, and judgment is the touchstone." (citations and quotations omitted) Brown Paper Company v. Berlin, 142 N.H. 563, 570 (1997).

Neither granted nor denied.

7. The Taxpayer failed to satisfy its burden of establishing that the subject was taxed at a higher percentage of fair market value than other properties in the community.

Denied.

8. The absolute auction sale of the subject property in 2010 is not a reliable indicator of market value under the circumstances. First, because the Board ruled previously that the auction sale was not evidence of market value, that issue is barred under the doctrines of res judicata and collateral estoppel. See Sleeper v. Hoban Family P'ship, 157 N.H. 530, 533 (2008) ("Res judicata precludes the litigation in a later case of matters actually decided, and matters that could have been litigated, in an earlier action between the same parties for the same cause of action."); Farm Family Mut. Ins. Co. v. Peck, 143 N.H. 603, 605 (1999) ("Under appropriate circumstances, collateral estoppel may preclude the relitigation of findings by an administrative board. In order for collatteral estoppel to apply to Peck's claims against Farm Family, the following elements must be satisfied: (1) the issue subject to estoppel must be identical in each action; (2) the first action must have resolved the issue finally on the merits; (3) the party to be estopped must have appeared in the first action or have been in privity with someone who did; (4) the party to be estopped must have had a full and fair opportunity to litigate the issue; and (5) the finding must have been essential to the first judgment.").

Neither granted nor denied.

9. Regardless, auction sales are generally not reliable as a means of establishing market value. See Society Hill at Merrimack Condominium Assn. v. Town of Merrimack, 139 N.H. 253, 256 (1994) (holding that market auction sale was not an indicator of market value where there were no negotiations between buyer and seller; the auction was a minimum bid; and the plaintiff's expert stated that auctions were not normally relied upon for real estate appraisals). There was no evidence that there were negotiations between the seller and eventual buyer, and the auction was an absolute (minimum bid) auction.

Neither granted nor denied.

10. Moreover, the evidence demonstrates that the subject property was listed on the open market for slightly more than seven (7) months, which Mr. Gerry testified, and this Board has previously recognized, is too short to market a property like the subject.

Neither granted nor denied.

11. Finally, the fact that the previous owners spent upwards of 16 million dollars to improve the property lends support to the Town's position that the market value of the property is $7,100,000.

Neither granted nor denied.

12. The Town also introduced evidence of other high-value properties in the community and assessor Joseph Lessard explained how these properties were assessed under the same methodology used to assess the subject, which itself is evidence of proportionality in assessing.

Neither granted nor denied.

13. The two bank appraisals from the fall of 2010 (Grasso Appraisal Services and Donovan Appraisal) that the Taxpayer submitted are entitled to little weight since the authors of those reports were not present to explain their conclusions and not subject to cross-examination, and use properties that are simply not comparable to the subject.

Neither granted nor denied.

14. Mr. Stanhope's appraisal reports for 2010 and 2011 are not reliable because, among other things, the reports: 1) fail to consider the custom-estate quality of the property when selecting comparable properties for the appraisal reports, but rather focused on the seacoast setting of the properties; 2) fail to properly account for the size of the subject property as related to the comparables used in the appraisal reports; 3) greatly undervalue the difference in gross living area square-footage for each comparable; 4) use internally inconsistent market timing and functional utility adjustments; and 5) use greatly exaggerated location adjustments.

Neither granted nor denied.

15. Mr. Stanhope's opinion of the subject property's land value is also flawed in light of the previous 2004 sale for $1,600,000 which led to the substantial renovation of the residence.

Neither granted nor denied.

16. The Board finds the appraisal prepared by Dale Gerry of Shurtleff Appraisal to be a reliable indicator of the subject property's market value.

Denied.

17. Mr. Gerry's conclusion of value is supported by substantial market data, which resulted in the use of five (5) relevant comparable properties, two of which were also used by Mr. Stanhope.

Denied.

18. Mr. Gerry's use of sales from Weston, Massachusetts was appropriate under the circumstances.

Denied.

19. Sale 2 in Mr. Gerry's report is comparable to the subject as it is a 13,319 square foot estate-style residence built in 2010 and which sold for $8,350,000. The improvement is located on 2.4 acres of land and is in a heavily wooded setting, giving the property a similar sense of privacy like the subject.

Denied.

20. Sale 3 in Mr. Gerry's report is comparable to the subject as it is a 19,785 square foot estate-style mansion and, like comparable 2, this property is located on more than 2 acres of land (2.8 acres) and also enjoys a private setting.

Denied.

21. Mr. Gerry did not err by using a listing as Comparable 4.
Neither granted nor denied.

22. Mr. Gerry's adjustments to the listed comparables were explained in his report and are considered reasonable adjustments.

Denied.

23. The fair market value of the property, as determined by the Town of North Hampton's appraiser, was $7,100,000 as of April 1, 2010, which supports the Town's assessed value.

Neither granted nor denied.

24. Based upon the evidence, the Board finds the market value for the subject property to be $7,100,000 for tax years 2010 and 2011.

Denied.

25. The Taxpayer's request for an abatement of taxes for tax years 2010 and 2011 is dismissed.

Denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Brendan P. Mitchell, Esq., Devine Millimet & Branch, P.A., 111 Amherst Street, Manchester, NH 03105, counsel for the Taxpayer; Matthew R. Serge, Esq., Upton & Hatfield LLP, PO Box 1090, 10 Centre Street, Concord, NH 03302-1090, counsel for the Town; Chairman, Board of Selectmen, Town of North Hampton, 233 Atlantic Avenue - 2nd Fl., North Hampton, NH 03862; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: April 1, 2014

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Anne M. Stelmach, Clerk