

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

**In Case No. 2010-0793, North American Dismantling Corporation v. City of Berlin, the court on September 15, 2011, issued the following order:**

Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We affirm.

The plaintiff, North American Dismantling Corporation, appeals the trial court's order denying its request for a tax abatement and affirming the property valuation by the defendant, the City of Berlin. The plaintiff argues that the trial court erred by: (1) failing to consider all factors affecting the property's value; (2) concluding that the price at which it purchased the property was not the best indicator of the property's value; (3) finding that all standing buildings on the property had value; and (4) finding that its principal was not qualified to testify as an expert in property valuation.

The plaintiff first argues that the trial court erred by failing to consider all factors affecting the property's value, including environmental contamination, external obsolescence, and dissimilarities between its property and properties that the defendant's appraiser found to be comparable. The defendant counters that the plaintiff failed to preserve each of these issues by listing them in its notice of appeal. See Progressive N. Ins. Co. v. Argonaut Ins. Co., 161 N.H. 778, 784 (2011) (issues not raised in notice of appeal are waived). Assuming, without deciding, that these issues were preserved for review, the plaintiff has the burden of proving that its taxable property was in the aggregate overvalued and the total assessment excessive. See Crown Paper Co. v. City of Berlin, 142 N.H. 563, 569 (1997). There is no rigid formula that can be used to arrive at full and true value for property tax assessment, nor is specific weight required to be allocated to any of the several approaches. Id. at 570. Rather, all relevant factors must be considered, and judgment is the touchstone. Id. Determination of fair market value is an issue of fact, and we will not disturb a finding by a trial court unless it is clearly erroneous or unsupported by the evidence. Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 255 (1994). The trial court found that the defendant's appraiser prepared an extensive valuation and analysis of the property, based upon the comparable sales approach and taking into consideration the environmental issues, the location of the property, and the available utility services. The defendant's appraiser testified that he made appropriate adjustments to the comparable properties, and the trial court

found the appraiser's methodology to be appropriate. The appraiser valued buildings on the property based upon whether they were in use, available for use, or scheduled for salvage or demolition. The trial court found that the appraiser incorporated depreciation rates, fractional obsolescence, and economic obsolescence in his valuations. Based upon our review of the record, we conclude that the evidence supports the trial court's decision to affirm the defendant's property valuation.

The plaintiff next argues that the trial court erred in concluding that the price at which it purchased the property was not the best indicator of the property's value. We have recognized numerous factors that a court should consider when determining whether 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 seller, and whether some relationship existed between the buyer and seller that would influence the sale price. Society Hill, 139 N.H. at 255. The trial court acknowledged that an arm's length sales price can be one of the best indicators of a property's value, see Poorvu v. City of Nashua, 118, N.H. 632, 633 (1978), but concluded, after consideration of the evidence, that the sale price in this case was "a unique value arrived at in a distressed setting and is not determinative of the value for tax purposes." Based upon our review of the record, we find support for the trial court's finding and no error of law.

The plaintiff next argues that the trial court erred in finding that all standing buildings on the property had value because, it asserts, the highest and best use of the property required their demolition. Contrary to the plaintiff's assertion, the trial court did not find that the highest and best use of the property required demolition of buildings. The trial court adopted the opinion of the defendant's appraiser, who opined that the property was in transition, in a selective demolition process, with various buildings and improvements having potential reuse or temporary use value. Valuation reflects all uses which can be made of the property. Steele v. Town of Allenstown, 124 N.H. 487, 491 (1984). As the trial court noted, the defendant's appraiser valued the standing buildings on the property based upon whether they were in use, available for use, or scheduled for salvage or demolition. We find support in the record for the trial court's finding that the buildings, structures and other taxable improvements on the property that had not been demolished continued to have taxable value.

The plaintiff next argues that while its principal was permitted to testify as to his opinion of the value of the property, the trial court erred in finding that he was not qualified to testify as an expert in property valuation. The determination of an expert's qualification to testify rests within the sound discretion of the trial court. Shaheen, Cappiello, Stein & Gordon v. Home Ins. Co., 143 N.H. 35 (1998). We will not reverse such a decision unless we find that the trial court unsustainably exercised its discretion. Id. at 38-39; cf.

State v. Lambert, 147 N.H. 295, 296 (2001) (explaining unsustainable exercise of discretion standard). The plaintiff argues that its principal has substantial experience in the demolition and salvage business and the acquisition of distressed and obsolete industrial properties. The trial court found that the plaintiff's principal was not a licensed New Hampshire real estate appraiser or broker, had no prior experience with uniform standards of professional appraisal practices, and had not dealt with any other properties in New Hampshire. Based upon these findings, which are supported by the record, we cannot conclude that the trial court unsustainably exercised its discretion in finding that the plaintiff's principal was not qualified to testify as an expert in property valuation in this case.

Finally, the defendant asserts that even if the plaintiff prevails on its arguments on appeal, the trial court's order must be affirmed because the plaintiff failed to prove disproportionality. In light of our decision, we need not address this issue.

Affirmed.

Dalianis, C.J., and Duggan, Hicks and Lynn, JJ., concurred.

**Eileen Fox,  
Clerk**

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