

**Cronin Realty Investments Trust**

**v.**

**Town of Pittsfield**

**Docket No.: 26419-11PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2011 assessment of \$117,000 (land \$45,200; building \$71,800) on Map U1/Lot 58, a single family home on 0.22 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was 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 assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property was listed for sale in December, 2013 with an asking price of \$85,000 and was recently reduced to \$75,000;

- (2) after the reduction in asking price, the Property was placed under contract to sell for “around \$75,000, with \$10,000 back to the buyer,” but the Taxpayer was notified recently the buyer was looking for a reduction in the sale price due to financing issues;
- (3) the appeal document filed with the board included information regarding four comparable properties that sold and show the Property is over assessed and the Town is incorrect in classifying those sales as “distressed” sales;
- (4) the market value of the Property was \$60,000 as of the April 1, 2011 date of assessment and the appeal should be granted.

The Town argued the assessment was proper because:

- (1) with the exception of one comparable sale submitted by the Taxpayer, all of the other sales were sold after foreclosure or were “short sales,” and involved buyers and/or sellers who were atypically motivated and have sale prices that do not reflect market value;
- (2) the sale price of the one arm’s-length sale submitted by the Taxpayer (28 Catamount Road), after appropriate adjustments are made, supports the proportionality of the assessment;
- (3) the asking price of the Property established in December, 2013 and the subsequent contract price do not reflect market conditions as of the April 1, 2011 date of assessment; and
- (4) the Taxpayer did not carry its burden of proof and the appeal should be denied.

The parties agreed the level of assessment was 112.9% in tax year 2011, the median ratio calculated by the department of revenue administration.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

Assessments must be based on market value, as prescribed in RSA 75:1. Proportionality is determined by focusing on market value adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003.); see also Appeal of Net Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

To determine whether the Taxpayer has met its burden of proving disproportionality, the board considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. at 68 ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Taxpayer discussed at length the marketing of the Property beginning in December, 2013 with an asking price of \$85,000 and offered this as the best evidence of market value. While this is some evidence of the Property’s market value, it is not necessarily conclusive evidence. The board has the discretion to evaluate and determine the credibility of the sale price being indicative of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). The board finds the listing price of the Property more than two and one-half years after the April 1, 2011 assessment insufficient to carry the Taxpayer’s burden of disproportionality.

The board further finds it can place no weight on the information supplied by the Taxpayer on the appeal document, supplemented by “listing sheets” (Taxpayer Exhibit No. 1). The Taxpayer did not submit enough information to the board regarding how those properties compare to the Property and what adjustments should be made. Further, the Town presented credible testimony regarding the circumstances regarding all but one of those sales, and the board finds they likely are not market based transactions.

The Town, for its part, presented a credible analysis that enabled it to conclude the assessment was reasonable. This analysis included the sale of 28 Catamount Road, which abuts the Property. When appropriate adjustments are made to account for physical differences between the comparable and the Property, its sale price is supportive of the assessment.

For all these reasons, the appeal for abatement is denied.

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, not the date this decision is received. 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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Michele E. LeBrun, Chair

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Sheila Cronin, 12 Baas Drive, Wolfeboro, NH 03894, Trustee for Cronin Realty Investments Trust, Taxpayer; Chairman, Board of Selectmen, Town of Pittsfield, PO Box 98, Pittsfield, NH 03263; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 2/20/14

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Anne M. Stelmach, Clerk