

**Stewart Realty Trust**

**v.**

**Town of Wakefield**

**Docket No.: 27230-13PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2013 assessment of \$493,000 (land \$359,100; building and other improvements \$133,900) on Map 75/Lot 4, 199 Virginia Lane, a single family waterfront home on 1.720 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. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer, represented by Rosemary Stewart, argued the assessment was excessive because:

(1) in tax year 2013, the Town improperly determined there were three categories of waterfront property and made errors in assigning several lots to these categories which impacted the final base rate values used in the revaluation completed for that year;

(2) based on the information presented in Taxpayer Exhibit No. 1 and the narrative statement explaining this information in Taxpayer Exhibit No. 2, the board should find the Property should be assessed based on a lower waterfront base rate of \$2,200 instead of the \$2,600 shown on the assessment-record card for tax year 2013;

(3) the Property, located on Pine River Pond, was purchased as a “spec” house and is smaller and has not been updated since its purchase approximately 25 years ago; and

(4) the market value of the Property, as stated in the appeal document, was \$450,000, and when this estimated value is adjusted by the 103% level of assessment in the Town, the tax year 2013 assessment should be abated accordingly (to \$458,400, rounded) and the appeal should be granted.

The Town, represented by Attorney Richard D. Sager, argued the assessment was proper because:

(1) the Town performed a revaluation of all properties in tax year 2013;

(2) the Town does not agree with the Taxpayer’s analysis and some of the information relied upon in that analysis is based on incorrect information, as shown in the municipality’s own exhibits;

(3) Municipality Exhibit A and G analyze sales of waterfront properties and shows the Town's application of a \$2,600 rate for excess waterfront is supported by the market data;

(4) the Town's contract assessor (Rod Wood) performed a "comparable sales" analysis (Municipality Exhibit B), using the same adjustment factors as in appraisals prepared for other waterfront properties owned by other taxpayers with properties on Pine River Pond and more recent sales, and this analysis provides a market value range which is supportive of the assessment under appeal; and

(5) the appeal should be denied.

The parties did not dispute the level of assessment in the Town for tax year 2013 was 103%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayer failed to meet its burden of proving the tax year 2013 assessment on the Property was disproportional. The appeal is therefore denied for the reasons stated below.

Under New Hampshire law, the proportionality of an assessment is determined by making a reasonable estimate of market value adjusted by the level of assessment in the municipality. See RSA 75:1 and, 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).

The Taxpayer did not present an appraisal or any other reasonably probative evidence of market value that would allow the board to find the assessment was disproportional. The

\$493,000 assessment adjusted by 103% level of assessment reflects an indicated market value of \$478,600, rounded. This value indication is within about six percent of the Taxpayer's own, but largely unsupported, market value estimate of \$450,000. There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

Further, the Taxpayer is not entitled to an abatement on the Property unless the assessment on its entire estate is disproportional. See Appeal of Town of Sunapee, 126 N.H. at 217 ("a taxpayer is not entitled to an abatement unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. [Citation omitted.]"); see also Appeal of Walsh, 156 N.H. 347, 356 (2007) (appeal dismissed when taxpayer sought to challenge only the land assessment, not "the property in its entirety (i.e., land and buildings) and the [t]own's level of assessment").

In this appeal, the Taxpayer argued the Town overassessed the land (by using a base rate of \$2,600 rather than \$2,200 for waterfront). The land assessment, however, is only one component of the total assessment on the Property. In order to meet its burden of proof, the Taxpayer was required to establish, by a preponderance of the evidence, that the assessment as a whole (land plus building and other improvements) was disproportional. The board finds the Taxpayer did not do so.

The board considered and evaluated the plethora of data and computations first presented by the Taxpayer and then by the Town (in response to the Taxpayer's presentation). Both parties

clearly undertook extensive research and preparation for this tax appeal and the lengthy testimony and exhibits presented at the hearing are indicative of the depth of their preparation. As noted above, however, the fundamental issue in this tax abatement appeal is proportionality (the market value of the Property adjusted by the level of assessment in the Town), not, as evident from the Taxpayer's presentation, the methodology used by the Town to classify and assess waterfront land.

In other words, even though the Taxpayer, based on Ms. Stewart's extensive research, had questions and disagreements regarding how the Town determined the waterfront land base rate during the 2013 revaluation, such questions are not sufficient to satisfy the Taxpayer's burden of proof without probative evidence of the market value of the Property in tax year 2013. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003) (arguing the municipality lacked a "sound methodology" is not sufficient to obtain a tax abatement without proof the resulting assessment is disproportional).

Weighing the evidence as a whole, the board finds support for the proportionality of the Town's assessment in tax year 2013. This evidence includes the Town's sales analysis (Municipality Exhibit B), which indicates the indicated market value of the assessment (\$478,600) is within the range of values of three comparables, when each is adjusted for differences with the Property. The Taxpayer did not rebut this evidence presented by the Town or, as noted above, submit an appraisal or other market-based evidence that would allow the board to find the Property had a lower market value.

For all of these reasons, the appeal 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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Albert F. Shamash, Member

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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: Stewart Realty Trust, c/o Rosemary Stewart, PO Box 332, East Wakefield, NH 03830, Taxpayer; Chairman, Board of Selectmen, Town of Wakefield, 2 High Street, Sanbornville, NH 03872; Richard D. Sager, Esq., Sager & Haskell, PLLC, PO Box 385, Ossipee, NH 03864, counsel for the Town; and R.B. Wood & Associates, 591 Little River Road, Lebanon, ME 04027, Contracted Assessing Firm.

Date: October 21, 2015

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Anne M. Stelmach, Clerk