

Paul E. and Lucia A. Metcalf

v.

Town of Pittsfield

Docket Nos.: 7324-89 and 12113-91 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of:

<u>Map/Lot</u>	<u>#Land Assessment</u>	<u>Building Assessment</u>	<u>Total Assessment</u>
U3-48	\$42,100	\$160,100	\$202,200

and 1991 assessments of:

<u>Map/Lot</u>	<u>#Land Assessment</u>	<u>Building Assessment</u>	<u>Total Assessment</u>
U3-48	\$42,100	\$160,100	\$202,200
U3-80	22,000	123,800	145,800
R11-14	24,000	6,644	30,644

Map U3-48 is a seven unit apartment building and real estate office on 0.17 of an acre of land; Map U3-80 is a five unit apartment building on 0.11 of an acre of land; and Map R11-14 is a vacant building on 1.50 acres of land. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an

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unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the 1989 and 1991 assessments of Map U3 Lot 48 were excessive because:

- (1) the building value is assessed too high because limited parking restricts the number of apartments that can be rented;
  - (2) the land is overvalued when compared to comparable neighborhood properties (i.e. Burbank, Catamount Realty);
  - (3) the third floor of the building used to be a ballroom and is now empty;
- and
- (4) the fair market value of the property in 1989 was \$125,000 and in 1991 was \$100,000.

The Town argued the 1989 and 1991 assessments of Map U3 Lot 48 were proper because:

- (1) the property is assessed for commercial use because of the number of apartments;
- (2) the Taxpayers could apply to the zoning board for a variance and would probably qualify for a special exception because of its pre-existing non-conforming use and there is parking available in the vicinity of the property;
- (3) the limited parking has been addressed through a 5 percent building

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depreciation and the building has also been depreciated for its condition and use; and

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(4) comparable properties are assessed in the same manner and the subject is equitably assessed.

The Taxpayers argued the 1991 assessment of Map U3 Lot 80 was excessive because:

(1) the property consists of a 5-apartment building, has no land and no parking for the tenants who are allowed to park in the church parking lot under certain arrangements;

(2) comparable properties indicate the land value is too high; and

(3) the assessment should be more in line with the assessment of Map U3 Lot 119 which is also a 5-apartment building assessed for \$108,900.

The Town argued the 1991 assessment of Map U3 Lot 80 was proper because:

(1) there is a dramatic difference in the square footage of the building on Lot 119 and the subject and the properties are in two different zones;

(2) the subject's neighborhood is more appealing; and

(3) comparable properties are assessed in the same manner and the subject is equitably assessed.

The Taxpayers argued the 1991 assessment of Map R11 Lot 14 was excessive because:

(1) the building has no value;

(2) the land is not on a town road, has no electricity and no well; and

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(3) the fair market value of the property in 1991 was \$15,000.

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The Town argued the 1991 assessment of Map R11 Lot 14 was proper because:

- (1) the land is valued consistent with other properties in the area and the condition was reduced for the road and character of the neighborhood; and
- (2) the building may no longer qualify as a home but as a shed in deteriorated condition.

**Board's Rulings**

Based on the evidence, we find the correct assessments should be:

<u>Tax Year</u>	<u>Map/Lot #</u>	<u>Land Assessment</u>	<u>Building Assessment</u>	<u>Total Assessment</u>
1989	U3-48	\$35,100	\$127,300	\$162,400
1991	U3-48	\$35,100	\$127,300	\$162,400
1991	U3-80	\$22,000	\$112,000	\$134,000
1991	R11-14	\$24,000	\$ 100	\$ 24,100

for the following reasons:

Map U3-48

The board was convinced by the Taxpayers' arguments that the limited parking restricts the number of apartments that could be rented. Even with zoning board approval, the lack of on-site parking is a detriment to the property. Comparable buildings with on-site parking would have a better chance of renting and keeping tenants over a property with limited or no parking available to its tenants. Further, the property has functional problems due to its size and limited use, specifically the third floor, a former ballroom, which is unoccupied.

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The board finds the condition factor on the land is high at 1.50 and based on its location, limited use, and a review of the comparables sales with multi-family dwellings along with all other evidence submitted, a condition factor of 1.25 is more appropriate. Further, the board has adjusted the functional depreciation of the building from 7% to 15% for the reasons outlined above.

The Department of Revenue Administration's 1989 equalization ratio for the Town was 100% and for 1991 was 118%. For 1991, that indicates that all real estate was assessed 18% above market value in 1991. The board's finding of \$162,400 for 1989 is adequate for the 1991 tax year given the equalization ratio of 118%.

Map U3 Lot 80

The board was convinced by the Taxpayers' arguments that the limited parking restricts the number of apartments that could be rented. The availability of the church parking lot has restrictions on the time that parking is allowed and is an arrangement that could be discontinued at any time. The board has applied a 5% depreciation to the building for the lack of available on-site parking.

The board was not convinced by the Taxpayers' arguments that the property should be assessed the same as Map U3 Lot 119. The Town was correct in adjusting for neighborhood differences and the significant differences in

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the sizes of the buildings.

Map R11 Lot 14

The board was convinced by the Taxpayers' arguments and the photographs of the building that it had little value and a minimum value of \$100 was applied. Based on the comparable sales and the Town's testimony, the board finds the land is assessed proportionately.

If the taxes have been paid, the amount paid on the values in excess of the above listed shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul E. and Lucia A. Metcalf, Taxpayers; and Chairman, Selectmen of Pittsfield.

Dated:

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Valerie B. Lanigan, Clerk

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