

Richard A. Horn and Mary V. Horn
v.
Town of Bennington

Docket No. 6667-89 & 8136-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$42,000 (land, \$2,500; buildings, \$39,500) and \$60,000 (land, \$4,500; building, \$55,500) on property identified as Map 7, Lot 41 and Map 7, Lot 72, respectively. Lot 41 consists of a duplex dwelling on a slab on a quarter acre lot on old Greenfield Road. Lot 7 consists of a triplex dwelling on a slab on an 11,000 square foot lot on Acre Street (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an 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 they were disproportionally taxed.

The Taxpayers submitted lengthy arguments related to their estimates of assessment by the market, replacement cost and income approaches to value. These assessment indications ranged from \$26,563 to \$31,493 for the duplex and \$40,483 to \$43,075 for the triplex. The taxpayers further argued that the assessments were calculated on a "floating" base, since the buildings were built and assessed subsequent to the last townwide revaluation.

The Town argued:

1) the duplex was purchased in July, 1987 for \$130,000 and the triplex in January, 1988 for \$180,000;

2) time adjusting these sales to 1989 and 1990 and equalizing the values by Bennington's 1989 and 1990 ratios indicates total indicated assessments for the two properties of \$89,950 and \$88,662 for 1989 and 1990.

The Town argued that consistent with the boards decision in James and Jane Andrews, et al v. Town of Gilford, Docket No. 5485-88, there is a 10 percent acceptable range around a finding of market value. Thus, a total maximum tolerable assessment would be \$98,900 for 1988 and \$97,500 for 1990.

Boards rulings

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

Lot 41 - 1989; \$39,540 and 1990; \$38,975

Lot 72 - 1989; \$50,415 and 1990; \$49,690.

This assessment is ordered because:

1) the Board finds the Town's methodology of adjusting both the sales of the property and the 1990 assessments done as the result of a townwide revaluation more credible and having fewer variables than the taxpayers various methods;

2) the Andrews v. Gilford decision referred to by the Town is not applicable in this case. In that case the town had not used the equalization ratio in calculating the taxpayers assessment, thus an acceptable range was found. However, in this case the town did use the ratio in determining the assessment. "If the municipality does not stipulate to the validity of the State ratio or otherwise indicate its acceptance of the accuracy by actual use, the plaintiff must introduce further proof of disproportionality", Stevens v. City of Lebanon, 122 N.H. at 33 (1982) (emphasis added).

Therefore the Town and the board are bound to use the proper ratios in this case once fair market is determined.

The Board finds the proper market values and assessments are as follows:

	<u>Market value</u>	<u>Ratio</u>	<u>Assessed value</u>
<u>Lot 41:</u>			
1989	\$158,150	25%	\$39,540
1990	\$139,200	28%	\$38,975

Lot 72:

1989	\$201,650	25%	\$50,415
1990	\$177,450	28%	\$49,690.

If the taxes have been paid, the amount paid on the value in excess of \$89,955 for 1989 and \$88,665 for 1990 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Richard and Mary Horn, taxpayers; and the Chairman, Selectmen of Bennington.

Melanie J. Ekstrom, Deputy Clerk

Date: March 20, 1992

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