

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0667, Brad W. Wilder v. Town of Plainfield, the court on November 3, 2006, issued the following order:

The respondent, Town of Plainfield (town), appeals a decision of the trial court granting the petition for abatement filed by the petitioner, Brad W. Wilder. The town argues that the petitioner failed to establish disproportionality as a necessary predicate for an abatement. We reverse.

To carry the burden of proving disproportionality, a taxpayer must establish that his property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in town. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result. Id. at 369.

We note at the outset that we have not been provided with a copy of the contested petition for abatement. The trial court found that the base rate of the property was not in contention and that the only issue before it was whether the view factor applied to the base rate was supported by the evidence. The court then found that the view factor as applied in this case was excessive and that this finding “necessarily [led] to a conclusion that the property is being assessed at a higher percentage of fair market value than the percentage at which property in town is generally assessed.”

Although the methodology used to develop the view factor may have been questioned, no evidence was presented to the trial court that the view factor was not applied uniformly and consistently. “The fact that the Trial Court finds as it did in this case, that the plaintiff’s property had a lower fair market value than that placed on it by the assessors is not in and of itself grounds for an abatement. If other properties in the [town] were similarly overvalued by the assessors, there would be no disproportion in the plaintiff’s tax burden.” Ainsworth v. Claremont, 106 N.H. 85, 87 (1964). “It is not when the appraised value of one property is greater than its true value but only when it is disproportionately higher in relation to that value than is the case as to other property in general, that its owner bears more than his share of the tax burden and is entitled to an abatement. Id. at 88.

Because the plaintiff failed to establish disproportionality, the trial court erred in granting his petition for abatement. Accordingly, we reverse.

Reversed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**