

William and Joan Bernstein v. Town of Gilford, Docket No. 5487-88  
George W. Gould v. Town of Gilford, Docket No. 5499-88  
Constantine and Maria Kostas v. Town of Gilford, Docket No. 5503-88  
Hervey D. Lafond v. Town of Gilford, Docket No. 5505-88  
Peter T. and Brenda C. Nieh v. Town of Gilford, Docket No. 5511-88  
Thomas S. and Sandra G. Perrault v. Town of Gilford, Docket No. 5515-88  
Sentry Federal Savings Bank v. Town of Gilford, Docket No. 5518-88  
James F. and Patricia C. Smith v. Town of Gilford, Docket No. 5520-88

#### DECISION

These eight appeals, having been consolidated for hearing, were heard on November 1, 1990. The Taxpayers were represented by Gerry Prud'homme and R. William Gordon of Equitax. The Town was represented by Walter L. Mitchell, Esq., Gene R. Littlefield, Town Appraiser, and David MacArthur, Appraiser, of Thompson Appraisal.

The properties under appeal are eight condominium units of the Stonedrift development. The Stonedrift development consists of a total of nine units contained in two buildings located on Lake Winnepesaukee. Unit #1 was not appealed. The Taxpayers, docket numbers, unit numbers, and assessed values are itemized below.

<u>Docket No.</u>	<u>Taxpayer</u>	Condo <u>Unit #</u>	Condo <u>Assessed Value</u>
5487-88	W & J Bernstein	4	\$157,450
5499-88	George W. Gould	6	151,400
5503-88	C & M Kostas	5	163,600
5505-88	Hervey D. Lafond	8	145,450
5511-88	Peter & Brenda Nieh	7	145,450
5515-88	T & S Perrault	3	157,450
5518-88	Sentry Fed. Sav. Bk.	9	151,400
5520-88	J & P Smith	2	157,450

The Taxpayers' representatives stated that the units had identical floor plans. They submitted an assessment analysis that by the comparative sales approach used three sales to estimate the 1988 market value of a unit furthest from Lake Winnepesaukee at \$180,000. The four units closest to the lake were adjusted by an additional \$5,000 for a 1988 market value of \$185,000. They then applied the 1988 equalization ratio of 63 percent as determined by the Department of Revenue Administration to arrive at proposed assessed values of \$116,550 for Units 2-5 and \$113,400 for Units 6-9.

The Town argued that some of the Taxpayers' adjustments to the comparables for time, building size, location, and view were not adequate.

The Town submitted a report by Mr. MacArthur that analyzed 136 arm's-length sales in Gilford that occurred from October 1, 1987, to October 1, 1988. He determined that the overall assessment ratio in Gilford for 1988 was 63 percent with a coefficient of dispersion of 27.6. He further stratified the sales in four categories and determined the stratified mean ratios were as follows:

Condominiums	83%
Vacant land	40%
Single-family houses	67%
Mobile homes	75%

In his report (Exhibit Tn A) he argued: "It is my opinion that true equity is not measured by a single number - 'The DRA Ratio' - but by implementing a set of parameters within which the majority of taxpayers' assessments lie. These parameters are calculated by using the traditional, basic statistical theory of normal (sic) distribution, which states that 68% of a population falls within one standard deviation plus and minus the mean.

"In Gilford in 1988, the mean is 61% and one standard deviation is 21%. Therefore, two-thirds of the assessments have ratios between 40% and 82%. Assessments over 82% should be adjusted downward to 82%. . . .

"In order for the majority of assessments, two-thirds or 68%, to be within the parameters of normal distrubiton (sic), condominium assessments should be reduced by 1% (83% to 82%), and vacant land assessments should be increased by 1% (38% to 40%). Single-family housing should not be adjusted."

There are two main issues before the Board:

- 1) What is the best evidence of market value of the units before the Board?
- 2) Once that has been determined, what adjustment to it is appropriate to result in assessments proportional to all the other assessments in Town?

While the Board gives some weight to the Taxpayers' sales and analysis, the Board finds that the basic sales data compiled and analyzed by the Town during a town-wide revaluation in 1986, in which a large number of sales were considered, formed a more accurate basis for determining market value in 1986 and that the relative value distinctions between units are still valid two years later.

However, the proportional issue to all the other property in the Town still needs to be addressed.

The Board finds that it is clear from the report of Mr. Estey, the Board's review appraiser, and from Mr. MacArthur's report that by stratifying the sales condominiums, as a class, were assessed at 84 percent (median ratio) of market value, vacant-land parcels at 35 percent, and all properties at 63 percent of value. This large disparity from the central tendency

63 percent is measured by the 1988 coefficient of dispersion of 27.6 and raises the concern for the need of a new complete revaluation. The Board will address this concern in a separate order, scheduling a hearing to determine if a need exists under RSA 71-B:16 for the Board to order a reassessment.

The courts have clearly held that to meet the "proportional and reasonable assessment" requirement of the New Hampshire Constitution, Part 2, Article 5, no one class of property can be assessed at a higher level than all other property.

[A] town is obligated to assess all lots of land at the same percentage of fair market value. Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 206, 46 A. 470, 473 (1899). It is impermissible to maintain a class of real estate that is assessed at a higher level than other real estate, whether that class consists of one parcel or half the town. It is therefore irrelevant that all assessments within one such class may be uniform. Widespread disproportionality is no defense. The same obligation of uniform assessment explains why an appealing taxpayer is not required to prove that his land was valued higher than other supposedly similar land. If he can prove that it was valued at a higher level than the level generally prevailing, he is entitled to relief. Stevens v. City of Lebanon, 122 N.H. 29, 32, 440 A.2d 451, 453 (1982). Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985).

The Taxpayers' representatives would have the Board determine 1988 market value and adjust it by the 1988 equalization ratio of the Department of Revenue Administration. The Town argues that as long as any assessment falls within one standard deviation plus or minus from the central point on a normal distribution curve (which for Gilford is 21 percent plus and minus of the mean central point of 61 percent) then the assessment is as accurate as can be expected.

The Board chooses neither approach. To determine equitable assessments the Board must balance the requirements of the New Hampshire Constitution

Part 2, Article 5, RSA 75:1 (appraise at market value), the realities of a variable marketplace and the pragmatic assessing functions used in carrying out these concepts.

The equalization ratio is not addressed specifically in any New Hampshire statute. The equalization of all town and city valuations is a responsibility granted the Department of Revenue Administration (hereafter DRA) by RSA 21-J:3, XIII. A median ratio is determined by the DRA for all municipalities for the purpose of apportioning tax levies between municipalities in the same county, regional school district, etc. These median ratios, which are derived by comparing the assessments of properties that have sold in each town to their selling price, are appropriate factors to equalize total valuations as they are the midpoint in the array of sales and are not unduly influenced by any outlier sales.

However, the use of the ratio has often deviated from the original intent as described above and has been used to indicate the general level of assessment in a municipality. The New Hampshire Supreme Court ruled in Stevens v. City of Lebanon that deviation from the equalization ratio does not necessarily establish disproportionality.

The city relies on Milford Props., Inc. v. Town of Milford, 120 N.H. 581, 419 A.2d 1093 (1980) and Milford Props., Inc. v. Town of Milford, 119 N.H. 165, 400 A.2d 41 (1979). Those cases stand for the general proposition that in an abatement proceeding, the trial court must consider the State's equalization ratio on the issue of disproportionality. Milford Props., Inc. v. Town of Milford, 119 N.H. at 167, 400 A.2d at 43. See Snow v. City of Rochester, 119 N.H. 181, 183, 399 A.2d 972, 973 (1979). The State equalization ratio, however, standing by itself, is not sufficient to carry the plaintiff's burden to demonstrate that his property taxes are greater than those on other property in general. Milford Props., Inc. v. Town of Milford, 120 N.H. at 582-83, 419 A.2d at 1094; Milford Props., Inc. v. Town of Milford, 119 N.H. at 167-68, 400

A.2d at 43. Stevens v. City of Lebanon, 122 N.H. 29, 32, 33 (1982).

In the cases before the Board, the Town did not use the ratio as a factor in establishing the assessments. The reverse is true. The assessments were established during a town-wide revaluation in 1986 and have remained constant while the market has changed at different rates for different types of property, thus resulting in the median ratio in 1988 of 63 percent. The Board rules that it is not reasonable taxation as envisioned by the drafters of the Constitution to strictly interpret such a ratio to mean that every property must be assessed exactly at the determined ratio.

The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, does justice require an abatement? . . . The justice to be administered is to be sufficiently exact for the practical purposes of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. They cannot be fixed by an invariable rule. Manchester Mills v. Manchester, 58 N.H. 38, 39. (emphasis added)

The matter in issue in tax abatement proceedings is whether the taxpayer has been required to pay a disproportionately higher tax than other taxpayers in the district. Trustees of Lexington Realty Trust v. Concord, 115 N.H. 131, 336 A.2d 591 (1975); Winnipiseogee etc. Co. v. Laconia, 74 N.H. 82, 84, 65 A. 378, 379 (1906). Actual market value is not technically the matter in issue in tax abatement proceedings but, rather, is only a matter in evidence. Winnipiseogee supra; see Amsler v. Town of South Hampton, 117 N.H. 504, 374 A.2d 959 (1977). Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833.

Market value of real estate is not an objective technical determination. The marketplace is a morass of human subjectivity in which the random distribution of opinions of market value is the norm. That is the first element of variability. A second element of human subjectivity is when an appraiser makes judgements in valuing property in the assessing process.

As a result, the Board has many times ruled that there is no one exact value but rather a reasonable range in which a valuation should fall. What is an acceptable range? The Town's argument that a reasonable range is plus or minus one standard deviation departs too far from RSA 75.1 to be reasonable.

The Board rules that the best coefficient of dispersion (hereafter COD) possibly achievable in any town based on its property mix is the most accurate measurement of a reasonable and proportional valuation range. Generally the Board finds that the more homogeneous towns are capable of achieving CODs at the time of a revaluation of 5 percent to 10 percent, while more heterogeneous towns composed of diverse property types and owners with more divergent social and economic backgrounds can usually only achieve CODs of 10 percent to 20 percent.

The Board finds that the Town of Gilford, following the 1986 revaluation, had a COD of 15.57, which, while not ideal, is not unusual for a town with a property mix such as Gilford and the volatility of the market that existed at that time. The Board rules that for 1988 a good range of valuation for the Town of Gilford would have been 10 percent plus or minus the median ratio. Therefore, an acceptable range for values to fall in to be proportional is 63 percent plus or minus 10 percent, or a range from 57 percent to 69 percent (rounded).

Therefore, the board rules that the properties under appeal should be reduced by a factor of 69 percent divided by 84 percent, or 82 percent, to be proportional.

Therefore the correct assessments are as follows:

<u>Docket No.</u>	<u>Condo Taxpayer</u>	<u>Condo Unit #</u>	<u>Assessed Value</u>
5487-88	W & J Bernstein	4	\$129,100
5499-88	George W. Gould	6	124,150
5503-88	C & M Kostas	5	134,150
5505-88	Hervey D. Lafond	8	119,250
5511-88	Peter & Brenda Nieh	7	119,250
5515-88	T & S Perrault	3	129,100
5518-88	Sentry Fed. Sav. Bk.	9	124,150
5520-88	J & P Smith	2	129,100

In an Opinion of the Justices in 1829, the Court defined the word "reasonable" as used in the New Hampshire Constitution, Part 2, Article 5, to also mean "just".

The word "reasonable", in this clause of the constitution, seems to be used as having the same meaning with the word just, and the sense of the clause to be, that taxes shall be laid, not merely proportionally, but in due proportion, so that each individual's just share, and no more, shall fall upon him . . . .

To establish the rules by which each individual'S just and equal proportion of a tax shall be determined, is a task of much difficulty, and a very considerable latitude of discretion must be left to the legislature on the subject.

The Board rules that these abatements are a just resolution of the cases and achieve the best practical balance between the demands of the Constitution and the statutes and the pragmatic realities of defining market value.

If the taxes have been paid, the amounts paid on the value of each of these properties in excess of the above listed assessments are to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

December 18, 1990

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I hereby certify that copies of the within Decision have been mailed this date, postage prepaid, to Gerry Prud'homme, the Taxpayers' representative, and to the Chairman, Board of Selectmen, Town of Gilford.

Michele E. LeBrun, Clerk

December 18, 1990

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979); See also Marshall Valuation Service, Section 1, Page 3, March (1989). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). Based on the evidence, our judgment is that the proper assessment is \$1,469,400.

Therefore, if the taxes have been paid, the amount paid on the value in excess of \$1,469,400 is to be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin

Ignatius MacLellan

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#### ORDER RE MOTION FOR REHEARING

On January 4, 1991, the Board received a motion for rehearing from the appellants' tax consultants stating:  
(T)he Board decision was unreasonable and unlawful because the Board adopted in its decision a new rule incorporating a 10% variation in the equalization rate to be applied in this case. Such a variation is in violation of the New Hampshire Constitution, State Statutes, and the prior decisions of the New Hampshire Supreme Court.

On January 14, 1991, the Town submitted an objection to the appellants' motion for rehearing.

The Board denies the motion for rehearing as the appellants do not offer to present any evidence that existed but was unavailable at the time of the original hearing, nor does the motion raise any error of law.

The Board is very cognizant of the legal arguments raised by the appellants but believes the Supreme Court has never had the exact facts and legal issues as raised by these cases fully argued before it.

Succinctly stated, the issue raised for rehearing is: does an assessment to be reasonable and proportional need to be exactly at the same

percentage of market value as the Town's equalization ratio or is there an acceptable range from the ratio that the assessment can be.

In its decision, the Board took note of the Town of Gilford's high coefficient of dispersion and the possibility of poor overall tax equity. Consequently, a hearing has been scheduled for January 25, 1991, to determine if a need exists under RSA 71-B:16 to order a town-wide reassessment.

Short of a total reassessment, the Board believes that strict adherence to the median of the assessment-to-sales ratios as an indication of proportionality is not practical or reasonable. To do such would theoretically have 50 percent of the properties eligible for an abatement-- even right after a reassessment. This in the Board's opinion does not qualify as reasonable as the drafters of the constitution envisioned and required. Rather, the Board is of the opinion that a just measurement of proportionality is whether an assessment falls within a reasonable range from the median ratio as indicated by the best possible coefficient of dispersion obtainable following a good reassessment. Wise Shoe Co. v Town of Exeter, 119 N.H. 700, 702 states:

If (a taxpayer) can prove that (the property) was valued at a higher level than the level generally prevailing, he is entitled to relief. Stevens v. City of Lebanon, 122 N.H. 29, 32, 440 A.2d 451, 453 (1982). Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). (emphasis added)

Where the appellants' property is a part of a distinguishable class of property that is significantly overassessed (see Board Decision Pg. 3), it would not be reasonable, as the appellants argue, to reduce the assessments to the low end of an acceptable range. As an abatement causes a transferral of tax burden to all other taxpayers within the town, a reduction of that

magnitude would cause an unreasonable and disproportionate shift of tax burden. The inverse argument is equally specious. It would not be equitable to increase the assessments of a class of property that was, as a whole, significantly underassessed (e.g. land in Gilford at 35 percent in 1988) to the upper end of an acceptable range as that would cause too large a share of the tax burden to be lifted from all the other taxpayers. A broad understanding of both the legal issues and assessing pragmatisms, tempered with balanced judgement, produces the most equitable assessments possible. Assessing is not a simple arithmetic calculation. The marketplace, which is the basis for determining proportional assessments, is not without subjectivity.

The Board reaffirms that the original decision achieves the best practical balance between the demands of the constitution that a tax be reasonable and proportional, the statutes that require market value to be the basis for assessing property, and the innate vagrancies of the market place.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within Order have been mailed this date, postage prepaid, to Gerry Prud'homme, the Taxpayers' representative, and to the Chairman, Board of Selectmen, Town of Gilford.

Michele E. LeBrun, Clerk