**THE STATE OF NEW HAMPSHIRE**
**SUPREME COURT**

**CASE NO. 2020-0474**

**Appeal of City of Berlin**

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Rule 10 Appeal from Orders of the New Hampshire Board of Tax and Land Appeals

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Brief for the City of Berlin

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### New Hampshire Cases:



### Other Cases



### Constitution:

**Statutes**:



**Regulations**:

## CONSTITUTIONS, STATUTES, ORDINANCES, RULES, AND REGULATIONS:

The text of the cited Constitutions, statutes, ordinances, and regulations is included in the City's Appendix to this Brief at 184:

## ISSUES PRESENTED[1]

1. Whether BTLA acted unlawfully or unreasonably by refusing to grant City directed verdict upon the close of PSNH's case, when PSNH, as the taxpayer, had the burden of proving the general level of assessment in the City to prove disproportionality but failed to put on any evidence regarding the general level of assessment in the City, the equalization ratio the City actually used, or the propriety of using any New Hampshire Department of Revenue's ("**DRA**") equalization ratio as the general level of assessment in the City?[2]

2. Was BTLA's decision to apply the DRA "after the fact" 2017 Equalization Ratio, determined in the spring of the following year, to determine the proportionality of the City's assessment of PSNH's Property unlawful or unreasonable, when: (1) PSNH failed to put on evidence to support the use of that ratio; (2) City did not stipulate to the use of that ratio; and (3) City did not use that ratio in setting the assessment?[3]

3. Was BTLA's decision to apply the unsupported DRA "after the fact" 2017 Equalization Ratio unlawful or unreasonable, when the City could not possibly have used that ratio because: (1) that ratio did not exist as of April 1, 2017 assessment date; (2) that ratio did not exist as of the DRA's September 1, 2017 deadline for municipalities to submit the

[1] Given the size of the Certified Record, the City has compiled the portions of the materials cited in this Brief into an Appendix for ease of reference (cited as "Appendix __.").
[2] Preserved Appendix 53-54, 141-51.
[3] Preserved Appendix 50-51, 141-51.

MS-1 Report containing inventory of assessments; (3) that ratio incorporated market conditions and sales that did not exist as of April 1, 2017; (4) the City did not use that ratio in setting assessments or billing taxes to PSNH or any other taxpayer for Tax Year 2017; and (5) that ratio was not calculated or determined by the DRA until the Spring of 2018?[4]

4. Was BTLA's decision to apply the unsupported DRA "after the fact" 2017 Equalization Ratio unlawful or unreasonable, when the BTLA overlooked the uncontroverted evidence in the record that the City did not and could not possibly have used the DRA's 2017 Equalization Ratio?[5]

5. Was BTLA's decision unlawful or unreasonable, or in violation of City's due process rights, when the BTLA in denying the City's Motion for Rehearing relied upon documents that were outside the record, documents that were submitted in a separate case, and testimony from a seven-year-old decision in a separate case that involved neither PSNH nor the City?[6]

6. Did BTLA violate City's due process rights by forcing the DRA "after the fact" 2017 Equalization Ratio upon the City based on the litigation decisions of different municipalities, in different appeals, concerning different properties, and concerning different general levels of

[4] Preserved Appendix 53-54, 150-51.
[5] Preserved Appendix 141-51.
[6] City had no opportunity to raise this error because BTLA made the error when denying City's rehearing request. Appendix 180; RSA 541:6.

assessment, thereby depriving City of its right to hold PSNH to its burden of proof?[7]

[7] Preserved Appendix 155-57.

## Statement of the Case

This appeal concerns a taxpayer's burden to prove the general level of assessment in the municipality to prevail in a tax abatement appeal. PSNH brought an RSA 76:16-a property tax abatement appeal, challenging the City's assessment of the J. Brodie Smith Hydro-Electric Facility ("Smith Station") for tax year 2017.[8] The BTLA held a twelve-day consolidated trial on PSNH's 138 tax abatement appeals against 47 individual municipal respondents and spanning Tax Years 2014 through 2017. During the trial, PSNH and the City each submitted expert testimony and an appraisal regarding the fair market value of Smith Station.[9] The BTLA ultimately found that the City's expert's valuation of Smith Hydro was more credible and better supported than PSNH's expert's valuation.[10]

However, to determine whether the opinion of value submitted by the City's expert's supported the grant of an abatement, the Board applied PSNH's preferred equalization ratio—the DRA's "after-the-fact" 2017 Equalization Ratio—even though PSNH offered no evidence or testimony to support the use of this ratio, which was necessary for PSNH to carry its burden of proof to establish disproportionality.[11] Had the BTLA applied the DRA's 2016 Equalization Ratio, which was the ratio that the City supported with expert testimony and actually used (110.7%), rather than the PSNH's unsupported "after the fact" ratio (96.2%), the City would not have owed any abatement under the BTLA's Decision. The City now appeals

[8] Appendix 99.
[9] Appendix 99, 108-09.
[10] Appendix 118-19.
[11] Appendix 113-14, 119.

the BTLA's decision to apply that equalization ratio and respectfully submits that the BTLA's decision was unreasonable and unlawful regarding this limited determination.

## **Statement of the Facts**:

### i. The City's Assessment Process

To fully understand the issues that this appeal raises, it is important to provide background on the City's process for setting assessments, the State laws and regulations governing assessments, and the DRA's equalization ratios.

No more than every five years, the City is required to perform a revaluation of all property in the City.[12] See RSA 75:8-a; N.H. CONST., Pt. II, Art. 6. Generally, these property values are carried forward from year-to-year until the next revaluation. However, the City is statutorily required to annually assess the fair market value of property that has had a material physical change or other change affecting value. See RSA 75:8.

Pursuant to RSA 75:8, the City generally reassesses utility property annually because there frequently are year-to-year changes in depreciation, replacements, retirements, and additions.[13] Similarly, the City will reassess other commercial or residential property between revaluation years if there are changes, such as a new garage or house built.[14]

To ensure that the reassessed values of these utility, commercial, and residential properties are proportionate to the assessments of other property

[12] Appendix 250.
[13] Appendix 250-51.
[14] Appendix 252.

located in the City, the City will apply the known general level of assessment that is currently in effect to the reassessed values. For example, if property in the City is generally assessed at 95% of its fair market value in a given tax year, the City will reduce the assessment for a newly-built residence to 95% of the residence's fair market value to ensure proportionality among all taxpayers.

State law requires the City to appraise all property, including utility property, as of April 1 of the tax year in question. See RSA 74:1; RSA 75:1; RSA 72:8. The City is required to determine and submit those assessed values to the DRA on the MS-1 form by September 1 of the tax year in question, unless an extension is granted. See RSA 21-J:34, I; N.H. Admin. R., Rev 1707.03.

To timely comply with the DRA's MS-1 requirement and ensure proportionate taxation throughout the City, the City uses the DRA's median equalization ratio that is currently in effect to perform this equalization because the current equalization ratio is the only effective, known, and knowable ratio at the assessment date and MS-1 submittal date.[15] Therefore, for the City's tax year 2017 assessment of Smith Hydro, the City used the DRA's 2016 Equalization Ratio that was in effect, known, and knowable as of April 1, 2017 and September 1, 2017, which the DRA determined and published in approximately March of 2017.[16]

The DRA conducts annual equalization studies pursuant to RSA 21-J:3, XIII. The DRA's statutory purpose for preparing these studies and determining equalization ratios for every municipality is to apportion public

[15] Appendix 238-39; 252.
[16] Appendix 238-39.

taxes among municipalities in an equal and just manner. See RSA 21-J:3, XIII. However, no statute provides or implies that the DRA's equalization studies and ratios are intended to be used retrospectively as evidence of the general level of assessment for tax abatement purposes.

The DRA conducts its equalization study based in part on sales that were not known and knowable as of the April 1 appraisal date in a given tax year, and based in part on sales that did not occur during the tax year in question. See RSA 21-J:9-a, I (DRA's annual study includes transfers of property occurring from October 1 in the prior year to September 30 in the current year); RSA 76:2 (tax year runs from April 1 to March 31 in the following calendar year). Furthermore, the DRA does not determine or publish its equalization ratios until the beginning of following year. See RSA 21-J:3, XIII (requiring the equalization study to be completed by May 1 of the following year). For example, the DRA completed its "2016 Equalization Ratio" by May 1, 2017. Therefore, the DRA's equalization ratios do not precisely correspond to any particular tax year.

Furthermore, because of the timing of the State's equalization ratios, the State can only use the equalization ratios to apportion taxes for future years. See RSA 21-J:3, XIII (equalization studies are completed by May of the following year); RSA 76:1 (apportionments are effective as of the date the filing); Peter J. Loughlin, 16 New Hampshire Practice, Municipal Taxation and Road Law, §12.01. For example, the State's "2017 Equalization Ratio" is not determined until the beginning of 2018, well after a municipality has collected taxes for tax year 2017, and the State therefore uses the 2017 Equalization Ratio to apportion public taxes for tax year 2018. The DRA's equalization surveys confirm this statutory

interpretation. For example, the 2017 Equalization Survey (which was the basis of the "2017 Equalization Ratio"), is dated May 1, 2018, and states that the purpose of the total equalized valuations is to "Apportion county taxes for the 2018 tax year" and to "Apportion cooperative school taxes for the 2019 tax year."[17] (Emphases added.)

ii. City's Assessment of Smith Station

PSNH owns taxable property in the City, including real estate and including electric plants and related structures and equipment that are taxable as real estate. RSA 72:6; RSA 72:8. PSNH's taxable property includes Smith Station, which is a 17.6 MW hydroelectric generation facility.[18]

The City assessor determined the fair market value for Smith Station to be approximately $51 million for tax year 2017.[19] However, because property in the City was generally assessed at 110.7% of its fair market value, the City's assessor had to adjust Smith Station's fair market value by the general level of assessment to determine an assessment that was proportionally assessed.[20] As a result, the City assessor assessed Smith

[17] Appendix 287. Although the DRA's 2017 Equalization Survey is not part of the certified record, this Court can take judicial notice of it. Under New Hampshire Rules of Evidence, Rule 201, courts may take judicial notice of a fact that is "not subject to reasonable dispute" because it is "generally known" or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Here, the accuracy of this fact cannot reasonably be questioned because the State's use of DRA equalization ratios is prescribed by statute, the DRA authored the 2017 Equalization Survey, the DRA makes its equalization surveys publicly available on its website at https://www.revenue.nh.gov/mun-prop/property/equalization-2017/documents/eqswu-alpha.pdf, and the survey merely illustrates what the statutes prescribe.
[18] Appendix 107-08.
[19] Appendix 242-43.
[20] Appendix 242-43.

Station at $56,512,800 for tax year 2017.[21] This is the same process that the City uses every time it annually reassesses property, including PSNH's property, pursuant to RSA 75:8.[22]

iii. PSNH was aware pretrial that the general level of assessment would be a disputed issue of fact, triggering PSNH's burden of proof to establish the general level of assessment.

In a property tax abatement appeal, the Taxpayer bears the burden of proving by a preponderance of the evidence that it is paying more than its proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003); see also N.H. Admin. R., Tax 203.09. To carry its burden, the Taxpayer must establish that its property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Id. at 368. Therefore, to prevail on a tax abatement appeal a taxpayer must prove two facts: (1) the fair market value of the taxpayer's property; and (2) the general level of assessment in the municipality to equalize that fair market value and determine whether the taxpayer's property, in the aggregate, has been disproportionately assessed.

Prior to the PSNH's Tax Year 2017 appeals being consolidated with PSNH's 2014 through 2016 cases in the Master Docket, many of the municipalities involved in PSNH's Tax Year 2014 through 2016 appeals stipulated to the use of specific DRA equalization ratios as evidence of the general level of assessment in those municipalities for Tax Years 2014

[21] Appendix 135, 255. Prior to trial, the City and PSNH reached a settlement regarding PSNH's transmission and distribution property in the City. Consequently, the only property assessment disputed at trial was the City's assessment of Smith Station.
[22] Appendix 245, 251-53.

through 2016.[23] The City, however, did not stipulate to the use of a specific equalization ratio due to the City's assessment practices for utility properties.[24]

Well in advance of trial, the City put PSNH on notice of the City's equalization process and the equalization ratio that the City used in setting the Tax Year 2017 assessments. For Tax Year 2017, the City used the DRA's "2016 Equalization Ratio," which the DRA determined approximately in March of 2017, just prior to the City's April 1, 2017 assessment deadline.[25]

On the eve of trial, PSNH moved for the BTLA to adopt the DRA's "2017 Equalization Ratios" for PSNH's Tax Year 2017 appeal against the City.[26] The City objected, arguing that the general level of assessment is a triable issue of fact, for which PSNH bears the burden of proof at trial.[27] The City further noted that the City neither stipulated to the use of any level of assessment, nor used the DRA's 2017 Equalization Ratio when setting its Tax Year 2017 assessments and tax rate.[28] The BTLA did not immediately rule on PSNH's motion.

PSNH sought to introduce the DRA's 2017 Equalization Ratios as a full exhibit at the outset of the trial.[29] The City objected, arguing that while other municipalities may not object to the introduction of that ratio because they did not intend to contest the issue of general level of assessment, the

[23] Appendix 113.
[24] Appendix 113, 210-11.
[25] Appendix 238-39.
[26] Appendix 4.
[27] Appendix 23.
[28] Appendix 23.
[29] Appendix 206.

City had not stipulated to the use of any ratio and intended to hold PSNH to its burden of proof of the general level assessment.[30] The City further noted that PSNH's witness list did not include a certified New Hampshire assessor or other expert that would be able to establish the propriety of using that particular equalization ratio.[31] After BTLA Member Walker stated that the DRA's 2017 Equalization Ratio alone was not evidence as to which ratio should be used regarding the general level of assessment in the City,[32] the City stated that it would not object to the ratio being admitted as a full exhibit "as long as it's understood by [the BTLA] that th[e] exhibit does not establish the propriety of a particular equalization ratio for" the City.[33]

PSNH expressly acknowledged that it bore the burden of proof on this issue and stated that it "reserved [its] right to present additional evidence should the City put on evidence regarding the general level of assessment" and that, if the City did so, PSNH "should then have the opportunity to respond."[34]

iv. PSNH failed to put on any evidence during its case regarding the general level of assessment in the City

Despite knowing that: (1) the City contested the use of the DRA's 2017 Equalization Ratio; (2) the City argued and submitted that the DRA's 2016 Equalization Ratio was appropriate; and (3) the City used the DRA's 2016 Equalization Ratio when setting assessments for Smith Station and

[30] Appendix 206-17.
[31] Appendix 212.
[32] Appendix 214-15.
[33] Appendix 216-17.
[34] Appendix 209-10, 214.

other properties reassessed for Tax Year 2017, PSNH failed to put on any evidence during PSNH's presentation of its case regarding the appropriate general level of assessment. Nor did PSNH introduce any testimony, expert or otherwise, regarding the use of the DRA's equalization ratios when setting assessments, or whether it is proper to use the DRA's 2017 Equalization Ratio, which was not effective, not determined, and not knowable as of the statutorily required April 1 assessment date, and which is not based entirely on sales occurring during the tax year in question. In fact, PSNH's expert repeatedly and expressly disclaimed being knowledgeable in the equalization process or the DRA's determination of equalization ratios.[35] PSNH's own counsel acknowledged that its expert was "not an expert in the matter of equalization."[36]

v. City's Directed Verdict Motion

At the close of PSNH's case, the City moved for directed verdict regarding PSNH's tax appeal against the City, arguing that PSNH bore the burden of proof regarding the general level of assessment, and PSNH failed to produce any evidence to carry its burden.[37] When PSNH objected to the City's Motion, PSNH again stated that it reserved the right to rebut any evidence that the City submitted regarding the propriety of using the City's preferred equalization ratio.[38] The BTLA denied the City's Motion for Directed Verdict.[39]

[35] Appendix 222-23, 226-30, 233.
[36] Appendix 233; see also Appendix 226-30.
[37] Appendix 31, 53-54.
[38] Appendix 85, ¶57.
[39] Appendix 236-37.

vi. The City submitted uncontroverted expert testimony regarding its use of equalization ratios when setting assessments.

During the City's presentation of its defense, the City submitted the testimony of two experts, Mr. George Sansoucy and Mr. Brian Fogg, both from George E. Sansoucy PE, LLC ("GES"), and both of whom are licensed New Hampshire Assessors and New Hampshire Assessor Supervisors.[40] Mr. Sansoucy testified that assessing supervisor qualifications are important for knowing how to properly equalize assessments.[41] Mr. Sansoucy testified regarding the requirement to annually update property with material changes and improvements, including utility property.[42]

Mr. Sansoucy and Mr. Fogg each testified regarding the City's equalization process and the equalization ratio that the City actually used in setting the assessment for Smith Station for tax year 2017.[43] Mr. Fogg and Mr. Sansoucy further testified that the City did not use and could not have used the DRA's 2017 Equalization Ratio when setting the assessment for Smith Station because that the DRA's 2017 Equalization Ratio did not exist as of the April 1, 2017 assessment date.[44] Rather, the City used the current, effective equalization ratio, which was the DRA's 2016 Equalization Ratio, which was established approximately one month prior to the April 1, 2017 assessment date.[45]

[40] Appendix 256-83.
[41] Appendix 242.
[42] Appendix 250-52.
[43] Appendix 238-39, 249-53.
[44] Appendix 238-39, 249-53.
[45] Appendix 252-53; RSA 21-J:9-a.

After the City submitted this evidence regarding the equalization ratio the City used to set the assessments and that should be used to determine proportionality in the City's case, PSNH again failed to put on any evidence to support the use of the DRA's 2017 equalization ratio. Nor did PSNH even cross examine Mr. Fogg or Mr. Sansoucy regarding the propriety of using any particular DRA equalization ratio. Instead, Mr. Fogg's and Mr. Sansoucy's testimony went unrebutted by any evidence or testimony in the record, with PSNH instead relying solely upon its unsupported and unsubstantiated preference.

vii. BTLA's Decision

The BTLA ultimately ruled in favor of the City regarding the fair market value of Smith Station, finding that the City's opinion of value for Smith Station was more credible than that submitted by PSNH's expert.[46] However, the BTLA ruled in favor of PSNH's argument, which lacked supporting evidence, that the DRA's 2017 Equalization Ratio reflected the general level of assessment in the City and should be used to determine whether the City disproportionately taxed PSNH.[47] In doing so, the BTLA cited various BTLA and Supreme Court decisions, none of which dictated or required the use of the DRA's 2017 Equalization Ratio; but the BTLA failed to cite even a single piece of evidence or testimony in the record to support a finding that the DRA's 2017 Equalization Ratio reflected the appropriate general level of assessment in the City for Tax Year 2017.

[46] Appendix 118-19.
[47] Appendix 113-15.

Furthermore, the BTLA ignored the fact that PSNH failed to put on any evidence regarding: (1) the appropriate general level of assessment in the City for Tax Year 2017; (2) the City's assessment and equalization process; (3) the DRA's equalization process and the effective date of the DRA's equalization ratios; (4) whether the DRA's 2017 Equalization Ratio provides a better estimate of the general level of assessment than the DRA's 2016 Equalization Ratio used by the City; or (5) how it would be proper to use an equalization ratio that did not exist during the tax year in question, could not possibly have been used at the time state law and the DRA itself required assessments be made, and which even the State did not use to apportion public taxes for tax year 2017.[48]

viii. City's Motion for Rehearing.

The City timely moved for rehearing regarding the BTLA's determination that the DRA's 2017 Equalization Ratio reflected the general level of assessment for Tax Year 2017.[49]

The BTLA denied the City's Motion for Rehearing.[50] However, in doing so, the BTLA went outside the record in an apparent attempt to add factual support that was lacking from the BTLA's June 23, 2020 Decision. In particular, the BTLA relied upon: (1) a document that the City provided in different docket involving a different type of dispute and that did not involve PSNH and related to a different tax year; (2) a document posted on the City's website in June of 2020 regarding a different tax year; and (3)

[48] See also Appendix 212-13 (PSNH objecting to the use of data occurring after the April 1 assessment date).
[49] Appendix 140.
[50] Appendix 180.

quoted testimony that Mr. Sansoucy gave in a different case in 2013, and which case involved a different taxpayer and a different municipality.[51]

These documents were not part of the record, and neither party referenced these documents during the trial or in any post-trial pleading. Furthermore, the City's experts never had an opportunity to testify regarding these documents or their irrelevance to the factual issue of the general level of assessment in the City for Tax Year 2017.

## **Summary of the Argument:**

To prevail in a tax abatement appeal, a Taxpayer has the burden of demonstrating that it paid more than its proportional share of taxes. To meet that burden, the Taxpayer must prove both the fair market value of their property and the general level of assessment in the municipality. A Taxpayer cannot carry its burden of proving the general level of assessment by solely relying upon one of the DRA equalization studies unless the municipality actually used that ratio or stipulated to the validity of that ratio.

Pursuant to statute, the City assessed PSNH's property for tax year 2017 based on the fair market value of the property as of April 1, 2017. To ensure the assessment of PSNH's property was proportional to other properties in the City, the City used the DRA's "2016 Equalization Ratio," which the DRA determined as of May 1, 2017, when equalizing the re-assessed value of PSNH's Property. The City put PSNH on notice in advance of trial that the City neither used nor stipulated to the validity of

[51] Appendix 182-84.

the DRA's "2017 Equalization Ratio," which the DRA determined as of May 1, 2018. The City did not use 2017 Equalization Ratio because that ratio was not effective as of the April 1, 2017 assessment date, was not known and knowable as of April 1, 2017, was not known and knowable as of the September 1, 2017 deadline to submit assessed values to the DRA, and neither reflects only sales that occurred prior to April 1, 2017 nor every sale that occurred during tax year 2017.

Despite being on notice that the City neither used nor stipulated to the validity of the DRA's 2017 Equalization Ratio for tax year 2017, PSNH failed to put on any evidence at trial to support its preferred use of the DRA's 2017 Equalization Ratio. PSNH's sole expert witness expressly disclaimed having any knowledge regarding the equalization process or the propriety of using any particular equalization ratio. PSNH also failed to cross examine or otherwise rebut the City's expert testimony that it was not proper to use the DRA's 2017 Equalization Ratio. Therefore, PSNH failed as a matter of law to carry its burden of proving the general level of assessment in the City for tax year 2017, and the BTLA erred by ordering an abatement based on the unsupported DRA's 2017 Equalization Ratio.

Additionally, the BTLA violated the City's due process rights by making a factual determination in the City's case based on the litigation decisions of municipalities not party to the City's case, and by relying upon facts from outside the record to support the BTLA's denial of the City's request for rehearing.

## Argument:

### I. Standard of Review

This Court will reverse the BTLA's decision is the City can show by a preponderance of the evidence that the BTLA's decision was based on errors of law or was clearly unreasonable or unlawful. Appeal of Public Service Company of N.H., 170 N.H. 87, 93 (2017). The BTLA's factual findings are unreasonable or unlawful if they are not supported by competent evidence in the record or erroneous as a matter of law. Id. at 94. "When faced with conflicting expert testimony, a trier of fact is free to accept or reject an expert's testimony, in whole or in part." Id. at 701 (quotation and brackets omitted). However, the BTLA can only reject uncontroverted expert testimony if there are facts supporting that decision. City of Manchester Fire Dep't v. Gelinas, 139 N.H. 63, 66 (1994).

### II. The City was entitled to directed verdict or post-trial judgment as a matter of law because PSNH failed to carry its burden of proving the general level of assessment.

PSNH bore the burden of proving the general level of assessment in the City for tax year for 2017, which was a triable issue of fact. Because the City did not actually use or stipulate to the validity of the DRA's 2017 Equalization Ratio as the general level of assessment for tax year 2017, PSNH could not meet its burden by relying upon that ratio without supporting evidence. PSNH failed to introduce any evidence to support the use of its preferred equalization ratio, despite acknowledging its burden and reserving the right to introduce supporting evidence. Conversely, the only evidence in the record on this issue was uncontroverted expert testimony

that it was not proper to rely on the DRA's 2017 Equalization Ratio. Accordingly, the BTLA erred by not granting directed verdict or post-trial judgment in favor of the City.

A. PSNH bears the burden of proving the general level of assessment and cannot rely upon an unsupported DRA equalization ratio to carry its burden.

This Court has consistently held that the test in an abatement appeal is whether a taxpayer is paying more than its proportional share of taxes. Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). The taxpayer bears the burden of proving the disproportion by a preponderance of the evidence. Id.; Appeal of Public Service Company of N.H., 170 N.H. at 93-94. To prove that the taxpayer was disproportionately assessed, the taxpayer must prove the general level of assessment, which represents the proportion of fair market value at which other taxpayers in the municipality are assessed. N.H. Admin. R., Tax 203.09 (a); Appeal of Sunapee, 126 N.H. 214, 217 (1985). Therefore, the general level of assessment is a necessary factual issue that a taxpayer must establish to prevail on a tax abatement claim.

This Court has had a number of occasions to rule on a taxpayer's ability to use the DRA's 21-J:3, XIII equalization ratios (which are determined for a separate statutory purpose unrelated to tax abatement appeals) to meet the taxpayer's burden of proving the general level of assessment. Invariably, this Court has ruled that "evidence of the general level of assessment in the form of the equalization ratio for the town as calculated by the department of revenue administration 'is not sufficient to

carry the taxpayer's burden.'" Appeal of Sunapee, 126 N.H. at 218 (brackets and ellipsis omitted) (emphasis added) (quoting Stevens v. City of Lebanon, 122 N.H. at 32-33). "'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 taxpayer must introduce further proof of the general level of assessment.'" Id. (emphasis added); see also Appeal of City of Nashua, 138 N.H. 261, 267 (1994) (ruling that a taxpayer can rely solely on a DRA equalization ratio, without additional evidence, only when a municipality "does not offer an alternative to the DRA ratio").

Application of this rule to the City's case is straightforward. If the City did not use the DRA's 2017 Equalization Ratio for tax year 2017, did not stipulate to the validity of that ratio for tax year 2017, and offered an alternative ratio, then PSNH cannot prevail unless it introduced further proof regarding the general level of assessment.

Here, it is undisputed that the City did not use the DRA's 2017 Equalization Ratio when setting tax year 2017 assessments, did not stipulate to the validity of that ratio for tax year 2017, and identified the City's preferred ratio and communicated a clear and supported rationale for the use of this preferred ratio. Therefore, PSNH could not rely upon the DRA's unsupported 2017 Equalization Ratio and was required to "introduce further proof of the general level of assessment." Appeal of Sunapee, 126 N.H. at 218; see also Appeal of City of Nashua, 138 N.H. at 261.

B. PSNH failed to carry its burden of proof because PSNH did not submit any evidence to support its preferred equalization ratio.

Here, PSNH was aware of its burden to support its preferred equalization ratio, failed to put on any evidence to support the use of PSNH's preferred equalization ratio, and its expert disclaimed any knowledge regarding equalization ratios or general level of assessment. Therefore, PSNH failed to carry its burden of proof, and the City was entitled to directed verdict or post-trial judgment.

PSNH was fully aware before trial, at the outset of trial, and throughout the trial that the City did not use the DRA's 2017 Equalization Ratio when setting the assessment for tax year 2017, did not stipulate to the validity of that ratio, and disputed the validity of that ratio for tax year 2017.[52] PSNH repeatedly acknowledged its burden of proof regarding this issue and reserved the right to put on evidence to support the use of the DRA's 2017 Equalization Ratio as the general level of assessment in the City for tax year 2017.[53]

Despite being aware of its burden, PSNH relied solely upon the DRA's 2017 Equalization Ratio and submitted no evidence regarding whether or how it was proper to use that ratio to prove the general level of assessment for tax year 2017. Notably, the BTLA admitted the DRA's 2017 Equalization Ratio for the City based on the understanding of the BTLA and all parties that the ratio "does not establish the propriety of a particular ratio" for the City.[54] Nevertheless, during the presentation of its

[52] Appendix at 4, 23.
[53] Appendix at 85, 210, 214.
[54] Appendix 216-17.

case, PSNH failed to introduce any evidence regarding the propriety of using any particular equalization ratio to establish the general level of assessment for the City for tax year 2017. In fact, PSNH's expert expressly disclaimed being knowledgeable in the equalization process or the DRA's determination of equalization ratios, and PSNH's own counsel acknowledged that its expert was "not an expert in the matter of equalization."[55]

During the consolidated 12-day trial held over 36 calendar days, PSNH failed to introduce evidence on any of the following: (i) the equalization ratio the City used in setting the assessment for PSNH's property; (ii) the propriety of using the DRA's 2017 Equalization Ratio, which was not effective until May of 2018 and which even the State only used to apportion public taxes for tax year 2018; (iii) the propriety of using an equalization ratio that was not known as of the April 1 assessment date or September 1 MS-1 deadline; (iv) the propriety of using an equalization ratio based in part on property sales that occurred after those statutory dates; (v) how the DRA's 2017 Equalization Ratio could accurately reflect the general level of assessment for tax year 2017 when that ratio neither used every sale for the twelve months preceding the April 1 assessment date nor used every sale occurring during the 2017 tax year; or (vi) how the DRA's 2016 Equalization Ratio might not accurately reflect the general level of assessment for the City for tax year 2017, or (vii) how the DRA's 2016 Equalization Ratio might reflect the general level of assessment less accurately than the DRA's 2017 Equalization Ratio.

[55] Appendix 222-23, 226-30, 233.

PSNH similarly failed to introduce evidence regarding this factual issue during the City's presentation of its case. After PSNH rested, the City put on two experts who were fact witnesses regarding the City's equalization process and expert witnesses regarding equalizing assessments.[56] Each expert testified that it was not appropriate or possible to use the DRA's 2017 Equalization Ratio when setting assessments for tax year 2017.[57] Despite cross-examining each of the City's experts extensively, PSNH failed to even ask about the general level of assessment in the City.

Nor did PSNH introduce evidence on this issue during its rebuttal presentation, which lasted approximately a day-and-a-half. In other words, PSNH heard the City introduce evidence regarding this issue during the City's presentation of its case, and PSNH had yet another opportunity to present evidence to support the use of PSNH's preferred equalization ratio or to dispute the City's evidence. Again, PSNH failed to introduce <u>any</u> evidence.

In sum, PSNH failed to introduce any evidence regarding the general level of assessment in the City for tax year 2017 during the presentation of its case, through cross-examination of the City's experts, or during PSNH's extensive presentation of rebuttal evidence.

[56] Appendix 238-39, 249-52.
[57] Appendix 238-39, 249-52.

## III. The BTLA's finding that the general level of assessment for the City for tax year 2017 was 96.2% was erroneous as a matter of law and not supported by the evidence.

The BTLA ultimately ruled that the DRA's 2017 Equalization Ratio of 96.2% was the general level of assessment for the City for tax year 2017. The evidence in the record upon which the BTLA could have based this determination was limited to: (i) the DRA's 2016 Equalization Ratio of 110.7%; (ii) the DRA's unsupported 2017 Equalization Ratio of 96.2%; (iii) the unrebutted testimony from two qualified experts that the City properly used the DRA's 2016 Equalization Ratio; and (iv) the unrebutted testimony from two qualified experts that it would be improper to use the DRA's 2017 Equalization Ratio. Therefore, the BTLA's decision was erroneous as a matter of law and not supported by the evidence because all of the evidence in the record supported the use of the DRA's 2016 Equalization Ratio; no evidence in the record supported the use of the DRA's 2017 Equalization Ratio; and the DRA's 2017 Equalization Ratio is not sufficient standing alone. See Appeal of Public Service Company of N.H., 170 N.H. at 700-01 (BTLA's decision is unjust and unreasonable if its factual findings are not supported by competent evidence in the record).

### A. All of the evidence in the record supported the use of the DRA's 2016 Equalization Ratio, and there was no evidence to support the use of the DRA's 2017 Equalization Ratio.

All of the evidence in the record supported the use of the DRA's 2016 Equalization Ratio, and none of the evidence in the record supported the use of the DRA's 2017 Equalization Ratio. Although both the DRA's 2016 Equalization Ratio and 2017 Equalization Ratio were both introduced

without support at the outset of trial, the DRA's 2017 Equalization Ratio was admitted subject to the understanding that the "exhibit does not establish the propriety of a particular equalization ratio for" the City.[58]

During the City's presentation of its defense, the City submitted the testimony of two experts, each of whom are licensed New Hampshire Assessors and New Hampshire Assessor Supervisors.[59] The City's experts testified regarding: (i) assessing supervisor qualifications are important for knowing how to properly equalize assessments;[60] (ii) the statutory framework governing RSA 75:8 reassessments;[61] (iii) the City's equalization process and the equalization ratio that the City used in setting the assessment for PSNH's Property; (iv) the City did not use and could not have used the DRA's 2017 Equalization Ratio because that ratio did not exist as of the April 1, 2017 assessment date;[62] and (v) the City used the best evidence of the general level of assessment, the DRA's 2016 Equalization Ratio, which was established and effective approximately one month prior to the April 1, 2017 assessment date.[63]

As described above, PSNH did not introduce any contradictory evidence or even cross-examine the City's experts on this issue. Thus, the testimony of the City's experts that it was proper to use the 2016 Equalization Ratio and not proper to use the DRA's 2017 Equalization

[58] Appendix 216-17. This grant of limited admissibility accords with the Supreme Court's decisions ruling that a DRA equalization ratio standing alone cannot prove the general level of assessment. See Appeal of Sunapee, 126 N.H. at 218.
[59] Appendix 256, 264.
[60] Appendix 242.
[61] Appendix 250-52.
[62] Appendix 238-39, 249-53.
[63] Appendix 252-53.

Ratio was uncontroverted and the BTLA was required to accept it. See City of Manchester, 139 N.H. at 66 (although a trier of fact may reject uncontroverted expert testimony, there must be a factual basis for rejecting that testimony); Appeal of Sunapee, 126 N.H. at 218 (taxpayer cannot rely on an unsupported DRA equalization ratio to meet its burden of proof). Accordingly, the BTLA's decision should be reversed because it was not supported by competent evidence in the record.

B. The DRA's equalization ratios standing alone are not proof as a matter of law regarding the general level of assessment in a municipality for any tax year.

As described above, a taxpayer cannot rely upon an unsupported DRA equalization ratio to prove the general level of assessment in a municipality. See Appeal of Sunapee, 126 N.H. at 218. In other words, an unsupported DRA equalization ratio does not prove as a matter of law the general level of assessment in a municipality for any tax year. This result accords with the statutory purpose for equalization ratios, the fact that equalization ratios do not precisely correspond to any particular tax year, and the fact that the State can only use equalization ratios to apportion taxes in future tax years.[64] See RSA 21-J:9-a; RSA 76:1; RSA 76:2. Therefore, no taxpayer can meet its burden of proving disproportionality by relying upon a DRA equalization ratio when the municipality did not use that ratio and contests the validity of that ratio for the tax year in question. Appeal of Sunapee, 126 N.H. at 218.

[64] Appendix 285, 287.

The purpose of the DRA conducting equalization studies and determining equalization ratios is to fulfill the DRA's statutory obligation to ensure public taxes that are apportioned among multiple municipalities are equal and just. See RSA 21-J:3, XIII. Conversely, the purpose of the DRA's equalization studies is not to determine the general level of assessment within a municipality for purposes of ensuring that each property within the municipality is proportionally assessed. See generally RSA 21-J:3, XIII; RSA 21-J:9-a; N.H. Admin. R., Rev.; N.H. Admin. R., Tax. In other words, there is no statutory or regulatory support for the BTLA's decision to effectively treat an unsupported DRA equalization ratio as prima facie evidence of the general level of assessment in a municipality.

If the State Legislature had wanted the DRA's equalization ratios, standing alone, to be sufficient evidence to meet a taxpayer's burden of proving the general level of assessment, the Legislature could have done so. For example, Minnesota's legislature enacted a statute that specifically provides that the state's "Department of Revenue sales ratio study shall be prima facie evidence of the level of assessment," but that "[n]o sales ratio study received into evidence shall be conclusive or binding on the court." MINN. STAT. ANN. 278.05(4). In the absence of such a legislative directive in this state, it was error for the BTLA to effectively treat a DRA equalization ratio as sufficient standing alone (i.e., prima facie evidence) to meet a taxpayer's burden of proving the general level of assessment.

Furthermore, the lack of statutory or regulatory authority makes sense given the fact that the DRA's equalization ratios do not precisely correspond to any particular tax year, are not effective until May of the

following tax year, and are only used to apportion public taxes in subsequent tax years. Significantly, the DRA's equalization studies are based on one year of sales that do not correspond to any particular tax year. While a tax year runs from April 1 in the current year to March 31 in the following calendar year, the DRA's equalization studies run from October 1 in the prior year to September 30 in the current year. RSA 76:2; RSA 21-J:9-a. Thus, no single DRA equalization ratio is based on every sale occurring in the twelve months immediately preceding the April 1 assessment date (i.e., the most recent known and knowable sales as of the April 1 assessment date). Nor is any single DRA equalization ratio based on every sale occurring during the twelve months beginning on the April 1 assessment date (i.e., the tax year in question).

Furthermore, the DRA's equalization ratios are only effective as of the date they are determined (May of the following year), and the State only uses these ratios to apportion taxes for subsequent tax years.[65] See RSA 21-J:9-a; RSA 76:1. Thus, even the State only uses these ratios to apportion public taxes going forward. In other words, the DRA's 2017 Equalization is not the "correct ratio" or the "current" ratio for tax year 2017. Rather, the DRA ratio that was in effect as of the assessment date—the 2016 Equalization Ratio—is the proper ratio for equalizing RSA 75:8 reassessments for tax year 2017. See Stevens v. Lebanon, 122 N.H. 29, 31-32 (1982) (ruling based on evidence from the municipality's assessor and a representative of the DRA that the proper DRA equalization ratio was the ratio that was "effective April 1" of the tax year in question); RSA 21-J:9-a

[65] Appendix 285, 287.

(equalization ratios are determined by May of the following year); RSA 76:1 (equalization ratios are effective as of the date of the filing).

Therefore, the taxpayer bears the burden of introducing evidence to support the use of a particular DRA equalization ratio because none of those ratios precisely corresponds to any particular tax year, and therefore none of those ratios standing alone is sufficient evidence regarding the general level of assessment.

C. The approach the City used to equalize RSA 75:8 reassessments in the only approach that allows municipalities to administer the State's tax system in a practical, workable way.

Municipalities are bound by several statutes that govern when a municipality must revalue property, set assessments, and report those assessments to the DRA. State law requires the City to annually assess the fair market value of property that has had a material physical change or other change affecting value. See RSA 75:8. State law requires that municipalities equalize those reassessed values to ensure proportionality. N.H. CONST., Pt. II, Art. 5. State law requires the City to appraise all property, including utility property, as of April 1 of the tax year in question. See RSA 74:1; RSA 75:1; RSA 72:8. The City is required to determine and submit those assessed values to the DRA on the MS-1 form by September 1, unless an extension is granted. See RSA 21-J:34, I.

Given these strict, mandatory requirements, it is impossible for municipalities to reassess property that has undergone changes in value and equalize those values using sales that occur after the April 1 assessment date (i.e., to account for appreciation occurring after April 1). Similarly, it is impossible for municipalities to use the DRA's upcoming RSA 21-J:3,

XIII equalization ratios, which are conducted in part using sales that occur after the April 1 assessment date and which are not determined and published until May of the following calendar year. See RSA 21-J:9-a.

The BTLA's decision is effectively that the DRA's unknown, subsequent equalization ratios are always the best evidence of the general level of assessment for the preceding tax year.[66] This result renders the legislature's statutory scheme unworkable and absurd, to the detriment of all but a few municipal taxpayers who choose to challenge their assessment based on large negative swings in the "after-the-fact" ratio.

The result is that RSA 75:8 reassessments become speculative lottery tickets, which harm the municipality's taxpayers regardless of the outcome. If unknown and uncertain future sales of property in the municipality go down, the RSA 75:8 reassessment was assessed at a lower proportion of fair market value than other assessments in the municipality. This results in a windfall to a select few taxpayers, the burden of which falls on the remaining taxpayers who are taxed disproportionately higher. If unknown and uncertain future sales of property in the municipality go up, the RSA 75:8 reassessment was assessed at a higher proportion of fair market value than other assessments in the municipality. This results in

[66] See for example the BTLA's non-precedential decision in North Country Environmental Services, Inc. v. Town of Bethlehem, Docket No. 19709-02PT et al., at 25 (May 7, 2007). The BTLA argues using circular logic that a municipality conducting an RSA 75:8 reassessment must "determine, through a separate analysis, what the level of assessment was in 2002 before the DRA's 2002 ratio became available in the spring of 2003," entirely ignoring the facts that the municipality cannot separately analyze sales that have not occurred for the same reason the municipality cannot use the DRA's 2002 ratio based on those sales, and therefore the municipality cannot possibly do what the BTLA suggests the municipality must do. In addition to being based on flawed reasoning, this case is factually distinguishable because the municipality in that case had an inconsistent equalization process, whereas the City here employs a consistent, fair process.

liability for an abatement, interest, and litigation expenses, the burden of which again falls on the remaining taxpayers to pay.

Therefore, requiring municipalities to equalize RSA 75:8 reassessment based on unknown future sales makes it impossible for municipalities to administer the statutory taxation system in a practical, workable way. See City of Berlin v. County of Coos, 146 N.H. 90, 94 (2001) (noting that the "demand of constitutional equality in taxation anticipates some practical inequities" and "absolute mathematical equality is not obtainable in all respects if taxation is to [be] administered in a practical way.").

Conversely, the approach advocated by the City can be administered in a practical, workable way. The City has a consistent process of equalizing RSA 75:8 reassessments using the current DRA equalization ratio that exists as of April 1, that is known and knowable as the statutorily-required April 1 assessment date, and that is based entirely on sales that were also known and knowable as of April 1. Because this ratio is known and based on known sales that have occurred, municipalities can conduct RSA 75:8 reassessments and equalize those assessments with certainty that the resulting assessment is proportional and just. All parties have certainty using this approach, and there is nothing left to speculate based on hypothetical future sales. This certainty is what is needed for the legislature's tax system to administered in a practical, workable way.

Furthermore, even if this approach does not result in "perfect" mathematical proportionality, neither does relying on a ratio based on some of future sales that will occur during the following April 1 through March 31 tax year. See City of Berlin, 146 N.H. at 94 (constitutional equality in

taxation does not require "absolute mathematical equality" (quotation omitted)). Of the two approaches, the approach that the City advocates is the only approach that can be "administered in a practical way." Id. (quotation omitted). The City's approach is also the only approach that was supported by evidence in the record.

## IV. The BTLA committed reversible error by relying upon documents from outside the record to deny the City's Motion for Rehearing.

The BTLA decision to introduce new evidence into this matter after the close of trial exceeded the BTLA's authority, violated the BTLA's procedural rules, and deprived the City of due process. See N.H. CONST. Pt. I, Arts. 2, 15; U.S. CONST. AMEND. XIV, §1.

A court "may not introduce its own evidence into a proceeding." Torromeo Indus. v. State, 173 N.H. 168, 177 (2020) (quotation omitted). This Court has ruled that "[i]t is axiomatic that a trial court cannot go outside of the evidentiary record except as to matters judicially noticed." Id. (quotation omitted). Here, the BTLA is further limited by its own procedural rules, which prohibit the introduction of evidence after a hearing has concluded. Rule Tax 201.27 provides that the "record shall be closed at the conclusion of the hearing" unless the Board at the hearing requests additional evidence or documents and leaves the record open to receive that evidence. N.H. Admin. R., Tax 201.27.

The BTLA, in denying the City's Motion for Rehearing, supported its decision by citing to multiple documents from outside the record that

neither party had referenced or cited in their respective pleadings.[67] The BTLA's decision to go on a fact-finding mission after the close of a twelve-day hearing, and after the parties had presented extensive briefing, appears to be confirmation that the BTLA recognized that PSNH failed to introduce any evidence that could support the BTLA's decision on this issue.

This decision is particularly egregious given the extensive nature of the underlying litigation. PSNH had the opportunity to provide supporting evidence when it submitted pre-trial motion regarding the general level of assessment for the City. PSNH had extensive opportunities to submit evidence throughout the 12-day trial that occurred over 36 calendar days. PSNH had further opportunities to ask the BTLA to expand the record in PSNH's 94-page post-trial memorandum, PSNH's Objection to the City's renewed motion for directed verdict, and PSNH's 20-page post-trial reply memorandum.

Furthermore, the BTLA's decision to rely upon evidence from outside the record for the first time when ruling upon the City's motion for reconsideration violated the City's due process rights. By statute and rule, the only avenue of relief after an agency has ruled on a motion for reconsideration is appeal to the Supreme Court. See RSA 541:3 to :6; N.H. Admin. R., Tax 201.37. In other words, parties do not have advance notice, an opportunity to present contradictory evidence, or an opportunity to be heard regarding facts that an agency notices for the first time in an order on a motion for reconsideration. Appeal of Portsmouth Trust Co., 120 N.H. 753, 758 (1980) ("the fundamental requisite of due process is the right to be

[67] Appendix 182-84 & n.3.

heard at a meaningful time and in a meaningful manner."); cf. Garner v. Louisiana, 368 U.S. 157, 173 (1961) (taking judicial notice of facts after the close of trial deprives parties of due process because those parties have no opportunity to offer contradictory evidence, to challenge the deductions drawn from such facts, or to dispute the credibility of such facts); de la Llana Castellon v. INS, 16 F.3d 1093, 1095, 1099-1100 (10th Cir. 1994) (ruling that an agency improperly noticed facts because the agency did not give notice of its intent to make additional findings and did not give an opportunity to be present rebuttal evidence).

In ruling on the City's motion for reconsideration, the BTLA decided to introduce new evidence toward PSNH's burden of proof when the record was already closed. This decision deprived the City of being able to present contradictory evidence, to challenge the credibility of the BTLA's evidence, and to have the City's two experts address the purported significance of the BTLA's evidence. Therefore, the BTLA denied the City due process by introducing new evidence on a closed record, which prevented the City from responding "at a meaningful time and in a meaningful manner."[68] Appeal of Portsmouth Trust Co., 120 N.H. at 758.

In sum, PSNH bore the burden of proof regarding the general level of assessment, repeatedly failed to introduce evidence to meet that burden,

[68] Even if it were proper for the BTLA to introduce new facts into the record without giving the City an opportunity to respond, the documents the BTLA relied upon are not suitable for administrative notice. The BTLA relied upon a document from an entirely separate case, testimony from a seven-year-old decision in a separate case that did not involve either PSNH or the City, and an isolated public notice from the City's website. The BTLA used these unrelated facts in an attempt to dispute the City's uncontroverted expert testimony. Thus, clearly these are not facts that are "not subject to reasonable dispute," "generally known," or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." N.H. R. Ev., 201.

and failed to ask the BTLA to keep the record open or to take judicial notice of facts from outside the record. Thereafter, the BTLA violated the City's due process rights when the BTLA exceeded its authority and violated its own procedural rules in an attempt to cover for PSNH's failure to even attempt to meet its burden of proof on this issue.

## V. The BTLA committed reversible error by making a factual determination in the City's case based on the litigation decisions of municipalities not party to the City's case.

The BTLA's decision appears to have been based in part on the decision of other municipalities in other tax cases to stipulate to the validity of PSNH's preferred equalization ratio. In doing so, the BTLA violated the City's due process rights. See N.H. CONST. Pt. I, Arts. 2, 15; U.S. CONST. AMEND. XIV, §1.

The BTLA has authority to consolidate cases that involve common questions of law or fact. See N.H. Admin. R., Tax 202.21; 203.08. However, the burden of proof remains on the taxpayer even in consolidated cases. See N.H. Admin. R., Tax 203.08(d). To determine whether a property was disproportionately taxed, the taxpayer must prove the general level of assessment for the taxing district in which the taxable property is located. See City of Berlin, 146 N.H. at 93. Because the general level of assessment for each of PSNH's tax appeals involves a different municipality (i.e., taxing district) and tax year, the general level of assessment of all property in the City for tax year 2017 is not a "common question of fact."

Therefore, PSNH bore the burden of proving the general level of assessment of all property in the City for tax year 2017, and none of the general levels of assessment in other municipalities or tax years has any relevance to whether PSNH met its burden of proof on this factual issue with respect to its appeal against the City.

The BTLA appeared to force an equalization ratio upon the City based on the decisions of different municipalities, in different tax abatement appeals, concerning different property, and concerning different general levels of assessment, to stipulate to a particular DRA equalization ratio.[69] For example, the BTLA relied upon the fact that most of the other municipalities in the consolidated case agreed to stipulate to certain DRA equalization ratios.[70] The BTLA further stated in its Decision that it "takes further note of the fact" that in recent Superior Court decisions involving different municipalities, those municipalities did not challenge the use of PSNH's preferred equalization ratio as the level of assessment in the municipality.[71]

The BTLA's decision to use the DRA's equalization ratios based on the litigation decisions of other parties in other cases denied the City of its right to hold PSNH to its burden of proof as to the specific tax appeal involving the City, in violation of the City's due process rights.

[69] Appendix 113-15 & n.14.
[70] Appendix 113.
[71] Appendix 115, n.14.

## Conclusion

For the foregoing reasons, the BTLA's decision was erroneous as a matter of law and not supported by the evidence. Accordingly, the City respectfully requests that this Court reverse the BTLA's decision and rule that PSNH is not entitled to any abatement from the City.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that pursuant to New Hampshire Supreme Court Rule 22(2), this brief contains approximately 9,459 words, excluding the cover page, tables of authorities, signature page, and certifications. This total is equal to or less than the total permitted by the rules of court. Counsel has relied on the word count of the computer program used to prepare this brief.

April 2, 2021

Christopher L. Boldt

## CERTIFICATE OF SERVICE

I hereby certify that I forwarded a copy of this Brief via the Court's electronic filing system to all parties of record.

April 2, 2021

Christopher L. Boldt