

**I. Standard of Review – Municipal Assessment Must Stand Unless Manifestly Wrong**

When a taxpayer appeals from a Town's denial of an abatement, the Commissioners begin their review of the assessment with the presumption that the assessor's valuation of the property is valid. Id. P7, 763 A.2d at 117. To overcome that presumption, the taxpayer seeking an abatement from the Commissioners has the initial burden of presenting "'credible, affirmative evidence' to meet his or her burden of persuading the [Commissioners] that the assessor's valuation was 'manifestly wrong.'" Id. P8, 763 A.2d at 117 (citations omitted). If, but only if, the taxpayer meets that burden, the Commissioners must engage in "an independent determination of fair market value ... based on a consideration of all relevant evidence of just value." Quoddy Realty Corp. v. City of Eastport, 1998 ME 14, P5, 704 A.2d 407, 408. <sup>1</sup>

"The Assessors valuation is entitled to a presumption of validity, and the taxpayer has the burden to prove the assessed valuation is manifestly wrong.: *Stuben v. Lipski*, 602 A.2d 1171

Impeachment of the assessment is not enough to show it was manifestly wrong; the petitioner also must affirmatively demonstrate, by credible evidence, the just value of the property; without such the Board has no basis to compare local assessment and petitioner's version of just value <sup>2</sup>

*Waterville Homes*, 655 A.2d at 366-67

*Glenridge Development Co.*, 662 A.2d at 931-32

*Wesson*, 667 A.2d at 599

*Adams*, 1999 ME 49, ¶ 22, 727 A.2d at 351

*Harwood*, 2000 ME 213, ¶ 9, 763 A.2d at 118

*Yusem*, 2001 ME 61, ¶¶ 8, 13-15, 769 A.2d at 870, 871-72

*Northeast Empire Ltd. Partnership #2*, 2003 ME 28, ¶ 8,  
818 A.2d at 1024

*Town of Bristol Taxpayers' Ass'n*, 2008 ME 159, ¶ 3 n.1,  
957 A.2d at 978 n.1

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<sup>1</sup> MAINE REVENUE SERVICES, S. O. M. (2019). *The Assessor's Practice*. Maine.gov.  
[https://www.maine.gov/future/sites/maine.gov.revenue/files/inline-files/pt105\\_text.pdf](https://www.maine.gov/future/sites/maine.gov.revenue/files/inline-files/pt105_text.pdf)

<sup>2</sup> Property Tax Review Board. (2019, May 9). *BOARD OF PROPERTY TAX REVIEW - DIGEST OF LAW COURT DECISIONS*. DIGESTS OF DECISIONS OF THE BOARD OF PROPERTY TAX REVIEW AND OF THE LAW COURT.  
<https://www.maine.gov/dafs/boardproptax/digest/documents/lawcourt-cases.pdf>

Only similarly situated properties must receive approximately equivalent tax treatment<sup>2</sup>

Town of Bristol Taxpayers' Ass'n, 2008 ME 159, ¶ 11 & n.6,  
957 A.2d at 979 & n.6

Roque Island Gardner, 2017 ME 152, ¶ 15, 167 A.3d at 568

To meet the initial burden of showing that the assessment was manifestly wrong, the taxpayer must demonstrate that

(1) the judgment of the assessor was irrational or so unreasonable in light of the circumstances that the property was substantially overvalued and an injustice resulted;

(2) there was unjust discrimination; or

(3) the assessment was fraudulent, dishonest, or illegal

Muirgen Props., Inc. v. Town of Boothbay, 663 A.2d 55, 58 (Me. 1995).

## II. **Just Value**

### Title 36, §701-A. Just value defined

*In the assessment of property, assessors in determining just value are to define this term in a manner that recognizes only that value arising from presently possible land use alternatives to which the particular parcel of land being valued may be put. In determining just value, assessors must consider all relevant factors, including without limitation the effect upon value of any enforceable restrictions to which the use of the land may be subjected including the effect on value of designation of land as significant wildlife habitat under [Title 38, section 480-BB](#), current use, physical depreciation, sales in the secondary market, functional obsolescence and economic obsolescence. Restrictions include but are not limited to zoning restrictions limiting the use of land, subdivision restrictions and any recorded contractual provisions limiting the use of lands. The just value of land is determined to arise from and is attributable to legally permissible use or uses only. [PL 2007, c. 389, §1 (AMD).]*

For the purpose of establishing the valuation of improved real property, the property must be valued based on its highest and best use as of April 1st of each year, taking all

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of the following 3 approaches to value into consideration: cost, income and sales comparison. In establishing the valuation of improved real property, assessors shall consider age, condition, use, type of construction, location, design, physical features and economic characteristics. [PL 2023, c. 441, Pt. B, §4 (AMD); PL 2023, c. 441, Pt. B, §7 (AFF).]

In determining just value, consistent with the Constitution of Maine, Article IX, Section 8, a property subject to restrictions, contractual or otherwise, that restricts the permitted use of a property may not be considered comparable to property not so restricted. [PL 2021, c. 663, §2 (NEW).]

While just value is the equivalent of market value, an actual sale “...shows what is paid, not what is the exact value. A sale may represent sentimental value or value as an investment, possible future sale, or it may represent use, location, or any one or more of many things.” Shawmut Inn v. Town of Kennebunkport. 428 A.2d 384, 394 (ME. 1981)

Assessors are to be granted considerable leeway in choosing the method of assessment, and stability in municipal income is a factor which must be considered. See Shawmut Inn v. Town of Kennebunkport, 428 A.2d at 390. A municipality is not required to adjust its manner of assessment with regard to each individual sale within its boundaries but shall recognize true value over a period of time regarded as measurably stable. Id. At 390. Moser v. Town of Phippsburg, 553 A.2d 1249, 1250 (ME. 1989)

Taxpayer must demonstrate “...something which in effect amounts to an intentional violation of essential principle of uniformity.” Shawmut Inn v. Town of Kennebunkport 428 A.2d at 394.

### **III. Equal Treatment of Taxpayers is Paramount**

All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof.  
[Emphasis added] Art. IX, § 8 <sup>1</sup>

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A fundamental requirement is that the owner bear the burden of taxation equally with that of similarly situated taxpayers. In determining a balance between assessment of just value and equality in sharing taxpayer burden, equality is to prevail. The court recognizes the constitutional requirement as reasonable attainment of rough equality in tax treatment of similarly situated property owners.

The prohibition against unjust discrimination derives from the Maine Constitution, which provides that "[a]ll taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof," Me. Const. art. IX, § 8, and the federal Equal Protection Clause, U.S. Const. amend. XIV, § 1. "To achieve an equitable distribution of the overall tax burden, assessors must apply a relatively uniform rate to all comparable properties in the district." *Petrin*, 2016 ME 136, ¶ 15, 147 A.3d 842 (alteration omitted) (quotation marks omitted). Unjust discrimination occurs where "similarly situated properties" are taxed unequally and is typically demonstrated through evidence of a practice that amounts to intentional "underassessment or overassessment of one set" of like properties. *Delogu v. City of Portland*, 2004 ME 18, ¶ 12, 843 A.2d 33; see *Ram's Head*, 2003 ME 131, ¶ 11, 834 A.2d 916.

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**957 A.2d 977 (2008)**

**2008 ME 159**

**TOWN OF BRISTOL TAXPAYERS' ASSOCIATION et al.**

**v.**

**BOARD OF SELECTMEN/ASSESSORS FOR the TOWN OF BRISTOL et al.**

Docket: Lin-08-54.

**Supreme Judicial Court of Maine.**

Argued: June 17, 2008.

Decided: October 21, 2008.

John S. Campbell, Esq. (orally), Campbell & Associates, P.A., Portland, ME, for the Town of Bristol Taxpayers' Association.

Ervin D. Snyder, Esq. (orally), Snyder & Jumper, Wiscasset, ME, for the Town of Bristol.

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

SAUFLEY, C.J.

[¶ 1] The members of the Town of Bristol Taxpayers' Association appeal from judgments entered in the Superior Court (Lincoln County, *Wheeler, J.*) affirming a decision of the Lincoln County Commissioners and entering final judgment for the \*978 Town on all other claims. The Taxpayers seek an abatement of their assessed real property taxes. The Taxpayers have argued only that the assessments amounted to unjust discrimination. We affirm the judgments of the Superior Court.

## **I. BACKGROUND**

[¶ 2] On September 18, 2002, the Selectmen of the Town of Bristol were notified by the Maine Revenue Services Property Tax Division, based on preliminary information regarding the value of land, buildings, and personal property in the Town, that the total value of the Town's taxable land was approximately \$600 million, and that the Town's tax ratio had fallen below seventy percent. See 36 M.R.S. § 327(1) (2007) (establishing minimum assessment ratios for municipalities).

[¶ 3] Consequently, the Board hired a property assessor, Robert Gingras, to perform a revaluation of the properties in the Town. Gingras developed factors to be used in the revaluation.<sup>[1]</sup> The factors were different for various areas of the Town, depending upon the distance of a particular area from the ocean. The new factors called for assessments of oceanfront land to be multiplied by a factor of 2.25 and properties that sat one or two lots back from the ocean to be multiplied by a factor of 2. Buildings were assessed separately, and all other land values in the Town were multiplied by a factor of 1.25 or 1.5 depending upon the location of the property. For example, lakefront lots were reassessed using a factor of 1.5.

[¶ 4] The Selectmen reviewed the factors at a December 5, 2002, meeting, and adopted the proposed factoring method at a Selectmen's meeting later in December.

[¶ 5] Following the reassessment, the Taxpayers — approximately sixty-five landowners in the oceanfront and "one or two lot back" factor groups — filed applications for property tax abatements.

[2] The Board denied the applications for abatement. Pursuant to 36 M.R.S. § 844(1) (2007), the Taxpayers appealed from the denials of their requests for abatement to the County Commissioners, who upheld the Board's valuations.<sup>[3]</sup> At no time before the Board or the County Commissioners did the Taxpayers argue that their individual properties were, in fact, overvalued; they relied instead on the argument that the factoring methodology was unfairly discriminatory.

979 [¶ 6] The Taxpayers then filed a complaint in the Superior Court asserting, among other claims,<sup>[4]</sup> requests for declaratory \*979 relief, and a Rule 80B appeal from the decision of the Commissioners not to grant abatements. The court affirmed the decision of the Lincoln County Commissioners denying abatement and entered a final judgment for the Town on all other claims.<sup>[5]</sup> The Taxpayers timely appealed.

## II. DISCUSSION

[¶ 7] When the Superior Court acts as an intermediate appellate court, "we review the decision of the Commissioners directly for an `abuse of discretion, error of law, or findings unsupported by substantial evidence in the record.'" Yusem v. Town of Raymond, 2001 ME 61, ¶ 7, 769 A.2d 865, 869 (quoting Town of Sw. Harbor v. Harwood, 2000 ME 213, ¶ 6, 763 A.2d 115, 117). Here we review directly the Commissioners' decision not to grant abatements to the Taxpayers.

[¶ 8] A property owner will be entitled to a property tax abatement when he can demonstrate one of the following circumstances:

- (1) that his property was substantially overvalued and an injustice resulted from the overvaluation;
- (2) that there was unjust discrimination in the valuation of the property; or
- (3) that the assessment was fraudulent, dishonest, or illegal.

*Id.* ¶ 9, 769 A.2d at 870.

[¶ 9] We will vacate the County Commissioners' decision that a taxpayer failed to meet his burden to show one of these three circumstances "'only if the record compels a contrary conclusion to the exclusion of any other inference.'" *Id.* (quoting Weekley v. Town of Scarborough, 676 A.2d 932, 934 (Me.1996)).

[¶ 10] Here, the Taxpayers concede that they never put any evidence before the Commissioners to show that their individual properties were substantially overvalued. Nor did the Taxpayers argue that the assessment was fraudulent, dishonest, or illegal. Instead, the Taxpayers argued only that there was unjust discrimination in the assessment process.

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[¶ 11] Our recent decision in Ram's Head Partners, LLC v. Town of Cape Elizabeth, 2003 ME 131, 834 A.2d 916, sets out the requirements for establishing the kind of unjust discrimination among properties that violates both the Maine Constitution and the Fourteenth Amendment of the United States Constitution. In *Ram's Head*, we made clear that only similarly situated properties must receive approximately equivalent tax treatment and rejected the idea that any given property had to be treated similarly with "the general mass of taxable property."<sup>[6]</sup> *Id.* ¶ 10, \*980 834 A.2d at 919 (quoting Kittery Elec. Light Co. v. Assessors of the Town of Kittery, 219 A.2d 728, 740 (Me.1966)). In that case, we held that a taxpayer was entitled to abatement where he demonstrated that similar lots that abutted his own property on the ocean were assessed at substantially less than his own. *Id.* ¶ 12, 834 A.2d at 919-20; see also City of Biddeford v. Adams, 1999 ME 49, ¶¶ 15-19, 727 A.2d 346, 350 (holding that unjust discrimination did exist where two similar waterfront neighborhoods were treated differently).

[¶ 12] By contrast, here the Taxpayers base their allegation of unjust discrimination on the fact that their properties were treated differently from properties in other areas of Town that were not similar to their own. Simply put, because there is no dispute that parcels in the Town were assessed consistently with other parcels in the same class, the Taxpayers have failed to make out a basic claim of unjust discrimination. They do not argue that their lots are actually overvalued or that any fraud or illegality has occurred. Therefore, the Taxpayers' abatement requests were properly denied.

The entry is:

Judgments affirmed.

[1] The Taxpayers focus their challenge primarily on the methodology used by Gingras and the Board in their reassessment. Although both the Board's methodology and its recordkeeping were less than laudable, we have previously made clear that impeaching the assessor's methodology is not, alone, a sufficient basis to justify abatement. Yusem v. Town of Raymond, 2001 ME 61, ¶ 13, 769 A.2d 865, 871.

[2] Although the Taxpayers submitted to the Superior Court a list indicating a membership of sixty-five individuals, the record is not clear as to precisely how many of these individuals filed applications for tax abatements to the Board.

[3] Because of the large number of appeals filed with the County Commissioners by individual members of the Association, only a small number were actually heard within the statutorily mandated period of sixty days from the date of filing. See 36 M.R.S. § 844(1) (2007). In each of the appeals that was heard by the Commissioners, the Town's valuation was upheld and the request for abatement was denied. The Superior Court properly treated those appeals that were not heard as denied, *id.*, and addressed all of the Taxpayers' claims for abatement as one consolidated 80B appeal pursuant to 36 M.R.S. § 849 (2007) and M.R. Civ. P. 20.

[4] The Taxpayers also brought a claim under the Maine Freedom of Access Act, 1 M.R.S. §§ 401-412 (2007), alleging that the Town never held public discussions or deliberations regarding the revaluation, the hiring of Gingras, or the adoption of his factoring method, and that decisions on these matters resulted from impermissible executive sessions. The Superior Court granted summary judgment to the Town on the FOAA count, concluding that the Taxpayers failed to present any evidence to rebut the Town's statements that no decisions occurred outside of the public realm. We do not disturb that judgment.

[5] The Superior Court properly rejected the Taxpayers' declaratory judgment suit. Abatement proceedings are the appropriate means through which to correct impermissible assessments. See Capodilupo v. Town of Bristol, 1999

ME 96, ¶ 4, 730 A.2d 1257, 1258-59. We address only the 80B appeal from the Commissioners' abatement decision.

[6] Although, generally, only similar properties must be given approximately equivalent tax treatment, we recognize the possibility that circumstances may arise in which the disparate tax treatment of different categories of property becomes so extreme that abatement could be justified. No such demonstration was made on this record. The Taxpayers' expert presented proposed factors that were in some ways similar to the Town's.

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