

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, ss

SUPERIOR COURT

Case No. 218-2025-CV-01009

Gordon Player, Albert Kruschwitz, et. al

v.

Town of Hampton, New Hampshire

PLAINTIFFS' MOTION FOR RECONSIDERATION

INTRODUCTION

This Motion is required because the Court did not rule on the claims Plaintiffs actually presented. The Order dismissed this action only after recasting Plaintiffs' suit as (i) a reassessment request subject to Board of Tax and Land Appeals (BTLA)-first jurisdiction and (ii) an abatement appeal subject to statutory deadlines, and then dismissed the constitutional counts as insufficiently pleaded under market-value disproportionality doctrine. That characterization is not merely unnecessary; it is inconsistent with the pleadings and with Plaintiffs' express Jurisdictional Clarification and Narrowing of Claims already on the docket.

Plaintiffs did not seek reassessment, abatements, or review of valuation mathematics. Plaintiffs sought a declaration that the Town acted without lawful authority to impose tax instruments absent completion of mandatory valuation predicates (measurement and listing, supervision of delegated assessors, and current, accurate data). The Court's Order therefore (1) misapprehended the nature of the action and (2) failed to decide the antecedent legality of the taxing act itself—a judicial question not committed to the BTLA.

Reconsideration is warranted because the Court did not reach the dispositive authority question presented. At minimum, clarification is required to specify whether that question was declined, dismissed, or left undecided, so that appellate review may proceed on a clean record.

PROCEDURAL POSTURE

The Order held that reassessment lies with the BTLA in the first instance, citing a pending BTLA matter and a February 11, 2026 hearing, and dismissed on that basis.

The Order further held that any 2024 abatement was untimely and that any 2025 abatement was premature absent selectmen action, and dismissed abatement relief accordingly.

The Order then dismissed the constitutional claims on the merits, treating them as disproportionality challenges to market-value assessments.

None of these grounds addresses the authority-only claim Plaintiffs expressly preserved and narrowed prior to dismissal.

STANDARD

Reconsideration is appropriate where the Court has overlooked or misapprehended controlling law or material matters, or where clarification is necessary to preserve appellate issues. Plaintiffs do not seek re-argument of facts. They seek a ruling on the claims actually presented.

ARGUMENT

I. The Court ruled on claims Plaintiffs did not bring and did not rule on the claim they did bring. The Order proceeds as if Plaintiffs sought reassessment and abatement, despite Plaintiffs' express clarification that no such relief was requested. Although the Court acknowledged Plaintiffs' jurisdictional narrowing, it nonetheless dismissed the case as if reassessment and abatement remained live issues.

This was legal error. Plaintiffs' claim is an *ultra vires* authority challenge: whether the Town may impose tax instruments at all when statutory and constitutional valuation predicates have not been completed. Courts retain inherent jurisdiction to determine whether municipal officials exceeded their lawful authority. That question is antecedent to, and independent of, any BTLA process.

By routing the case into BTLA and abatement frameworks that Plaintiffs disclaimed, the Court avoided deciding the only dispositive question before it.

II. The Order did not decide the lawful-predicate question; avoiding it is reversible error. The Order recites facts consistent with systemic valuation failure—no comprehensive measure-and-list for more than a decade, reliance on mass appraisal, and narrowed inspections—yet never answers the threshold question those facts raise: may a tax lawfully attach absent completed, supervised, and current valuation predicates? Instead, the Order resolves jurisdiction and merits questions that arise only if lawful authority already exists. That reverses the required order of analysis.

The dependency chain is simple:

lawful predicates → authority to tax → proportionality review.

If predicates fail, the levy is void *ab initio*. BTLA valuation arithmetic is contingent and irrelevant.

III. Exhaustion and primary-jurisdiction doctrines do not bar adjudication of authority where the agency cannot cure the defect.

The Order relies on statutory allocation of reassessment appeals to the BTLA. But Plaintiffs' claim alleges taxation undertaken without legal authority—relief the BTLA cannot grant. The BTLA cannot supply missing valuation predicates, supervise delegated assessors retroactively, or legalize an *ultra vires* levy.

Where the agency lacks power to grant the relief sought, exhaustion is not required. Judicial determination of legality is necessary and appropriate.

IV. The merits dismissal of constitutional claims flowed from the same mischaracterization and cannot stand.

The Order treats the constitutional counts as market-value disproportionality claims and relies on *Sirrell* to dismiss them. *Sirrell* presumes a valid taxing scheme and addresses proportionality

within that scheme. It does not hold that officials may impose taxes without satisfying mandatory valuation predicates.

Plaintiffs' authority claim is logically prior. Only if lawful predicates exist does proportionality analysis arise. By skipping the authority question, the Court dismissed constitutional claims without reaching their actual basis.

REQUESTED RELIEF

Plaintiffs respectfully request that the Court:

1. Grant reconsideration and amend the Order to address the authority question presented—whether the Town acted without lawful authority by imposing taxes absent completed, supervised, current valuation predicates; or
2. Clarify the Order by specifying whether the Court:
 - a. Declined jurisdiction over the ultra vires authority claim,
 - b. Dismissed that claim on the merits, or
 - c. Did not reach it at all, so that appellate review may proceed on a clean and accurate record.

Plaintiffs do not seek another opportunity to reframe their claims. They seek a ruling on the claims already and properly framed.

Respectfully Submitted,

/s/ Regina Mary Barnes _____
s/ Regina Mary Barnes on behalf of Hampton, New Hampshire taxpayers

/s/ Albert Kruschwitz _____
s/ Albert Kruschwitz on behalf of Hampton, New Hampshire taxpayers

CERTIFICATION

I hereby certify that a copy of the foregoing pleading was on this day forwarded to counsel and parties of record via the court's e-filing service.

/s/ Regina Mary Barnes
Regina Mary Barnes

Dated: January 21, 2026