

Summary of Testimony of Mark S. Gearreald delivered on  
Thursday, April 15, 2010 at 3:30 p.m.

House and Senate Committee on Governor Lynch's proposed budget cuts

My name is Mark Gearreald, and I am the Town Attorney for the Town of Hampton. I have also served as former Interim Town Manager for Hampton and am a past President of the New Hampshire Association for Justice.

I have read Justice Broderick's letter of April 7, 2010 that has been provided to you that outlines the cuts that he would have to make to reduce by \$4 million the budget of the judiciary proposed by Governor Lynch. These cuts would not keep the judiciary from addressing criminal cases, for these cases are constitutionally required to be afforded speedy trials, in the absence of which persons charged with crimes would have to be released. However, the civil/equity side of the Court's docket would grind to a halt. Cuts that would shut down that side of the Court's docket represent not just budget cuts but also cuts in State revenues and loss of economic vitality. I am therefore speaking in opposition to these cuts.

In my job, I deal frequently with appeals from Zoning Board of Adjustment and Planning Board decisions. This Legislature in RSA Chapter 677 has mandated that the Superior Court system afford priority on its docket to processing these appeals. See RSA 677:5 for ZBA appeals priority and RSA 677:15, IV for Planning Board appeals priority. There are very good reasons why you have mandated that such priority be given. These local land use board decisions involve developments that mean jobs, economic growth and tax revenues for the State in the form of business taxes and real estate transfer taxes. Developments are geared to making a profit in the particular economic climate in which

they are planned, and if these developments, once they are approved at the local level, are unduly delayed in court appeals, their market may disappear, so that even if they succeed on appeal, they may never get constructed.

Let me give you a highly visible example of how delays in court processing of appeals may kill an approved project. Between J and K streets on Ocean Boulevard in Hampton Beach is an empty lot where the Old Salt Restaurant burned down in 1999. Both the Hampton ZBA and Planning Board gave approvals to a 42 unit residential condominium project that was to have commercial units underneath. All that you can see of this development, which could have been a symbol of a new Hampton Beach, is a placard on site showing an architect's rendering of the building. The case took 4 years to get through all the appeals, and by the time the Supreme Court upheld the variances that had been granted by the Hampton Zoning Board of Adjustment, the market for this development was lost. There is no telling if this development will ever be built. Granted, there were other factors besides court delays that contributed to this particular project's taking 4 years to get through the court system, such as the developer's putting forth multiple versions of the plan, but the kind of delays experienced here will become the norm rather than the exception if the civil justice system is shut down by budget cuts. A loss of economic vitality will surely be the result.

The Town of Hampton has spent \$12 million to improve the infrastructure of roads, sewers and sidewalks at Hampton Beach so that its economy can be revitalized. In your last session, you appropriated \$13 million for much needed improvements for State Park facilities at Hampton Beach like the Band shell. These commitments will contribute much to the great economic engine for our State's economy that Hampton Beach can be,

but they alone are not enough. We need private sector input to fuel growth there as well. If developments such as the J and K Street development are going to be stifled by the court system's inability to process the appeals that this Legislature has mandated be handled on a priority basis, then prospects for our economic prosperity will be greatly weakened, and the many hours spent by volunteers serving on local land use boards such as planning boards and zoning boards of adjustment will have been wasted.

The Governor has suggested that the judiciary look to other areas to make cuts other than those Justice Broderick has identified such as eliminating acquisition of publications and delaying new technology. Speaking as a former law clerk to a trial judge, I can tell you that not funding these other areas will cripple trial judges' abilities to keep up with the law and to deliver sound decisions. This can lead to less sound decisions and to reversals on appeal.

So, I hope to leave you with the thought that it is not just the victims of personal injuries (who are dealing with high medical bills and loss of income at the worst time in their lives), who will no longer be getting their cases processed on the civil side of the court system due to these drastic, \$4 million in cuts to the judiciary's budget: it is also municipalities and the State and its economy that will suffer from the shutdown of the civil/equity side of that system.