

**TOWN OF PORTSMOUTH, RI
RESOLUTION #2021-02-22**

**RESOLUTION REQUESTING AND SUPPORTING LEGISLATION
TO AMEND TITLE 44, CHAPTER 5 OF THE RHODE ISLAND GENERAL LAWS
REGARDING MUNICIPAL TAXATION OF REAL ESTATE**

WHEREAS: in 1997, the R.I. General Assembly enacted legislation (P.L. 1997, ch. 179, § 1) which overhauled the statutory revaluation process for municipal taxation of real estate, to require that “each city and town shall conduct a revaluation within nine (9) years of the date of the prior revaluation and shall conduct an update of real property every three (3) years from the date of the last revaluation”; and

WHEREAS: the new revaluation process was based on the General Assembly’s recognition that the prior ten (10)-year cycle was “the longest revaluation cycle in the country”; the new revaluation cycle, with its three (3)-year updates, was designed “to provide more reliable and up-to-date property values in each of the cities and towns” and “to ensure that all taxpayers in Rhode Island are treated equitably”; and

WHEREAS: in 2001, the General Assembly enacted legislation (P.L. 2001, ch. 365, § 1) amending R.I. Gen. Laws § 44-5-15 regarding the filing of an annual account and R.I. Gen. Laws § 44-5-26 regarding tax appeals; and

WHEREAS: as amended, § 44-5-15 requires that a taxpayer, as a prerequisite to seeking relief from a tax assessment, must file with the assessor an annual account “specifying the value of every parcel of the real estate as of December 31 in the year of the last update or revaluation and personal estate as of December 31 of the tax year”; and

WHEREAS: as amended, § 44-5-26 requires that the mandatory statutory form for appealing a tax assessment give a taxpayer a right to appeal an assessment “if your property is: (1) OVERVALUED (assessed value is more than the fair market value as of December 31 in the year of the last update or revaluation for real estate and as of December 31 of the tax year for personal estate for any reason, including clerical and data processing errors” and further requires the applicant to state the taxpayer’s “opinion” of the property’s value “as of December 31 in the year of the last update or revaluation for real estate and as of December 31 of the tax year for personal estate”; and

WHEREAS: on May 2, 2018, the Rhode Island Supreme Court issued an Opinion in *Michael A. Balmuth et al. v. David E. Dolce, in his capacity as Tax Assessor for the Town of Portsmouth*, Supreme Court Case Nos. 2017-6-A, 2017-8-A, 2017-9-A, 2017-11-A, and 2017-12-A (“*Balmuth*”); a copy of the *Balmuth* Opinion is attached to this Resolution and incorporated herein; and

WHEREAS: in *Balmuth*, a group of Portsmouth taxpayers challenged their real estate tax assessments on December 31, 2008 (for tax year 2009) and on December 31, 2009 (for tax year 2010). The taxpayers conceded that the Assessor did not overvalue their properties on December

31, 2007, when he conducted a full revaluation of all real estate in the Town; rather, the taxpayers alleged that they were entitled to relief because their property values had fallen following the last revaluation due to a declining real estate market; and

WHEREAS: the Tax Assessor and the Tax Assessment Board of Review denied the taxpayers' appeals based on the provisions of R.I. Gen. Laws § 44-5-15 and § 44-5-26, as amended in 2001, because the properties were not overvalued as of the date of the last revaluation on December 31, 2007; and

WHEREAS: the taxpayers filed appeals to the Newport Superior Court which ultimately entered judgment for the taxpayers in five consolidated cases; and

WHEREAS: the Tax Assessor appealed from the Superior Court to the R.I. Supreme Court, seeking a *de novo* interpretation of the intent and effect of the 2001 amendments to R.I. Gen. Laws § 44-5-15 and § 44-5-26; and

WHEREAS: the Rhode Island League of Cities and Towns as Amicus Curiae submitted a brief to the Supreme Court which supported the Tax Assessor's statutory interpretation and positions; and

WHEREAS: on a vote of 3-2, the Supreme Court affirmed the Superior Court judgment for the taxpayers, ruling that the taxpayers were not confined to the property values established at the last revaluation of December 31, 2007 and were permitted to appeal their assessments for tax years 2009 and 2010 based on valuations of the properties as of December 31, 2008 and December 31, 2009; and

WHEREAS: the majority opinion found that it was unclear "whether plaintiffs are, as defendant argues, confined to the values of their properties as of December 31, 2007. Based on our thorough review of the language contained in chapter 5 of title 44, the only thing that appears clear to us now is just how unclear the conflicting language is.... [T]here is no shortage of doubt about whether the General Assembly intended to restrict plaintiffs to the values of their properties as of December 31, 2007, the year of the revaluation at issue. Unfortunately, neither the 2001 amendments to § 44-5-15 and the form required by § 44-5-26(b), adding the phrase 'in the year of the last update or revaluation[,] nor the legislative findings contained in § 44-5-11.5 are determinative in discerning legislative intent.... [B]ecause we are confronted with a tax statute so plainly afflicted with significant ambiguity, we are firm in our view that we are best guided by the maxim which directs that 'taxing statutes are to be strictly construed' with doubts resolved in favor of the taxpayer"; and

WHEREAS: the dissenting opinion stated: "Our review of the relevant tax statutes leads us to conclude that real estate property taxpayers are not entitled to appeal the valuation of their property each year, but may only challenge it 'in the year of the last update or revaluation...."; and

WHEREAS: the dissenting opinion considered the "possible ramifications of the majority's interpretation. Some taxpayers could seek a revaluation every year, requiring municipalities,

such as defendant, to expend funds in justifying them. Interpreting the statute in that manner would unnecessarily burden already strained municipal budgets, ultimately passing the costs on to taxpayers. Likewise, loss of revenue, which occurred in this case, would leave cities and towns attempting to recoup their losses by, again, looking to remaining property owners. In these times when most owners do not have expendable income, we cannot fathom the General Assembly wanting to do that”; and

WHEREAS: the majority opinion noted the dissent’s “cautions of such a descent into fiscal disarray. Besides noting that appealing a tax assessment is in and of itself rather cost-prohibitive, we nonetheless conclude that such a policy concern is best addressed by the General Assembly, not this Court.”

NOW, THEREFORE, BE IT RESOLVED, that the Portsmouth Town Council hereby urges the Rhode Island General Assembly to draft, introduce and pass legislation to amend the provisions of chapter 5 of title 44, as necessary, to address the ambiguities noted by the Supreme Court in *Balmuth*, in order to provide with clarity that real estate property taxpayers are not entitled to appeal the valuation of their property each year, but may only challenge the value in the year of the last update or revaluation, as indicated in the 2001 amendments to § 44-5-15 and § 44-5-26; and

BE IT FURTHER RESOLVED, that the Town Clerk submit a copy of this Resolution to the Town of Portsmouth’s State Senator and Representatives, the Speaker of the House of Representatives, the President of the Senate, the Rhode Island Governor, and every Rhode Island municipality.

Adopted this 22nd day of February 2021.

Kevin M. Aguiar, President
Portsmouth Town Council

ATTEST: _____
Jennifer M. West, Town Clerk