

PORTSMOUTH TOWN COUNCIL MEETING
FEBRUARY 22, 2021
MINUTES

7:00 PM – Town Council Chambers, Portsmouth Town Hall, 2200 East Main Road

MEMBERS PRESENT: Kevin M. Aguiar and Andrew V. Kelly in Town Council Chambers

MEMBERS PRESENT BY ZOOM: Linda L. Ujifusa, Daniela T. Abbott, Michael Buddemeyer, Keith E. Hamilton and J. Mark Ryan

Time: 7:00 PM

PLEDGE OF ALLEGIANCE

SITTING AS THE PORTSMOUTH TOWN COUNCIL

1. Roll Call

PRESIDENT’S EXECUTIVE SUMMARY – There was no Executive Session held.

CONSENT AGENDA - Motion to approve as presented made by Mr. Hamilton, seconded by Ms. Ujifusa. Motion passed 7-0.

Directions to view licensing applications: 1) Click on [Viewpoint](#), 2) Click Records and then type in the record number which is listed on the agenda, 3) Click on the highlighted record to view the application

1. Bills

2. Peddler License - Mobile Food Establishment (MFE), Renewals:

Wally’s Hot Dog Cart, 252 Oliphant Ln, Middletown, 1 cart (#1892)

3. CRMC – Public Notice 2021-01-066

Samuel Murry & Athena Pallas, 5 Seaconnet Avenue, Portsmouth, RI 02871 – for a State of Rhode Island Assent to construct and maintain: Residential Boating Facility consisting of a 4’ wide fixed pier to a ramp and float, with a total length of 185.84, extending to 73.6’ beyond Mean Low Water (MLW) and requiring a Variance to Section 1.3.1(D)(11)(1).

SITTING AS THE BOARD OF LICENSE COMMISSIONERS – Motion to approve made by Dr. Ryan, seconded by Mr. Hamilton. Motion passed 7-0.

Directions to view licensing applications: 1) Click on [Viewpoint](#), 2) Click Records and then type in the record number which is listed on the agenda, 3) Click on the highlighted record to view the application

1. Victualler License – Annual, New:

Kaffeology, Inc. d/b/a Kaffeology Cafe, 8 Russo Road (#1891)

ADJOURN – Motion to adjourn as the Board of License Commissioners made by Dr. Ryan, seconded by Mr. Hamilton. Motion passed 7-0.

MINUTES – Motion to approve 8/11/20, 10/17/20 and 11/23/20 made by Dr. Ryan, seconded by Mr. Hamilton. Motion passed 6-0-1. Mr. Buddemeyer abstained. Motion to approve 1/25/21 and 2/8/21 made by Dr. Ryan, seconded by Mr. Hamilton. Motion passed 7-0.

08/11/20
10/17/20
11/23/20
01/25/21
02/08/21

TAX VOUCHERS – Motion to approve made by Mr. Hamilton, seconded by Dr. Ryan. Motion passed 7-0.

Request approval for Tax Vouchers #20210222-01

TOWN ADMINISTRATOR'S REPORT

1. Covid Update

- Rhode Island formally opened vaccinations for COVID-19 to all residents aged 65 and today at two state-run sites. These sites are located at Sockanosett Cross Road in Cranston and at the Dunkin' Donuts Center in Providence and more sites will open in the coming weeks.
- People eligible for vaccinations at these state-run centers include anyone who is 65 or older who lives or works in Rhode Island, or who attends school here, as well as people who previously were eligible under Phase I vaccination.
- Other options for vaccination still include going to a select retail pharmacy or, for those 75 and older, registering for a vaccination at the Portsmouth site.
- The Portsmouth POD is located at Raytheon off West Main Road. We began operating last Wednesday and will administer first and second doses each Wednesday until we have completed what the State is calling Phase 1 of the inoculation program.
- I'd like to thank the Volunteers, Staff, our EMA Director (Ray Perry), MED POD Coordinator (Rich Talipsky), and the MED POD Commander (Chief Paul Ford), and the entire team at Raytheon Missile Defense for their tremendous work in establishing the Portsmouth Med POD
- Additionally, the Dept. of Health created a survey to gather information for those unable to leave their home to receive a vaccine. If you are unable to leave home to receive a COVID-19 vaccination, or are the healthcare provider or family caregiver of someone who is homebound, you can inform RIDOH through the RIDOH Website.
- All of this information is located at our website and through the Department of Health.

2. Parks, Recreation and Open Spaces Masterplan

- A request for proposals for planning services for a Parks, Recreation and Open Space Master Plan was released by the Town last Friday. This will be funded by a grant received from the vBCF.
- Proposals will be accepted until 2:00PM on March 17th. Bids will be opened at 4:00 on March 17th.

3. Senior Center Update

- CFP was contacted by the Portsmouth Senior Center to explore the possibility of temporarily moving some of the most valued programs and services to the CFP

Community Center. The CFP Board is enthusiastically in support of helping in any way they can. They have a brand new facility that is ADA compliant and has state of the art technology.

- The Center hosted the chair of the Senior Center Board last week and they discussed the Senior Center's needs and how the Center might be able to assist. There is more work to be done to truly understand the financial and operational implications for all involved, but the Center is confident they can successfully help serve our Portsmouth seniors and welcome working with the Town and the Senior Center to do so.
- Additionally, I've asked the Recreation Director to meet with the Senior Center Director to discuss possible use of the Brown House for possible program and office space.
- Lastly, there has been considerable concern regarding the Jacobs report and estimates to refurbish the Anne Hutchinson building. We have an architecture engineering and planning firm under contract and I've asked them to re-asses the building and report their cost estimates to the council upon completion. The Council can then consider that report, the Jacobs report and the pending proposal from Church Community Housing as you determine future courses of action.

Additionally: CAPT Keith Humphreys (USN ret.) has passed. Long supporter of the Town and active in the Tank Farm Redevelopment Committee, Aquidneck Island Planning Commission, and the Economic Development Commission. He was a friend to everyone in Town Hall and a true Gentleman. We will miss him.

RESIGNATIONS AND APPOINTMENTS

1. Resignations:

a. Board of Canvassers – Motion to accept with regret the resignation of E. Richard Carpenter and to have the Clerk reach out to both the Chairs of the Democratic and Republican Committees to ask them to put forward five names each to be considered for a replacement made by Mr. Hamilton, seconded by Dr. Ryan. Motion passed 7-0.

2. Appointments:

a. Tree Commission – Motion to approve Brenden DePrest made by Mr. Hamilton, seconded by Dr. Ryan. Motion passed 7-0.

b. Planning Board (Re-Appt.) – Motion to reappoint Luke Harding made by Mr. Hamilton, seconded by Dr. Ryan. Motion passed 7-0.

OLD BUSINESS (Discussion/Action)

1. Comprehensive Plan Update. – Motion to schedule Public Hearings May 17th, 18th, 19th and 20th for 2 hours a night to receive public comments on the different elements of the Comprehensive Plan made by Mr. Hamilton, seconded by Dr. Ryan. Motion passed 7-0.

2. Monthly finance report. – Motion to receive and place on file made by Mr. Hamilton, seconded by Ms. Ujifusa. Motion passed 7-0.

NEW BUSINESS (Discussion/Action)

1. Clean Ocean Access 2020 Update. – No votes taken.

2. Wellness Week with Herron Proclamation. – Motion to approve made by Mr. Hamilton, seconded by Mr. Kelly. Motion passed 7-0.

3. Resolution Requesting and Supporting Legislation to Amend Title 44, Chapter 5 of the Rhode Island General Laws Regarding Municipal Taxation of Real Estate. – Motion to approve made by Ms. Ujifusa, seconded by Mr. Hamilton. Motion passed 7-0.

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

4. Request discussion and Town Council guidance regarding Civic Support requests. – No votes taken.

CORRESPONDENCE – Motion to receive and place on file made by Mr. Kelly, seconded by Dr. Ryan. Motion passed 7-0.

1. Monthly RIRRC Report. / R. Antaya
2. Resolution in Support of Lifting the Restrictions on Small Businesses due to COVID-19. / North Providence Town Council
3. Resolution in Support of 2021 – H 5113 an Act Relating to Miniature Alcoholic Beverage Container Deposit Recycling. / Charlestown Town Council

FUTURE MEETINGS

Mar 08 7:00 PM – Town Council Meeting
Mar 22 7:00 PM – Town Council Meeting
Apr 12 7:00 PM – Town Council Meeting
Apr 26 7:00 PM – Town Council Meeting

ADJOURN – Motion to adjourn made by Mr. Kelly, seconded by Dr. Ryan. Motion passed 7-0.

Time: 8: 33 PM

Jennifer M. West, Town Clerk