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## Athena Providence Place et al. v. Elyse M. Pare, in her capacity as Tax Assessor for the City of Providence, et al., 262 A.3d 679 (R.I. 2021)

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**Tax Law.** *Athena Providence Place et al. v. Elyse M. Pare, in her capacity as Tax Assessor for the City of Providence, et al.*, 262 A.3d 679 (R.I. 2021). Tax payments under a tax stabilization agreement are exempt from municipal property taxation, notwithstanding the property's valuation or the tax rate. Once a tax stabilization agreement expires, municipalities must tax the property at its full and fair value under a revaluation of the property, so long as the municipality provides adequate statutory notice of the revaluation, and the revaluation is not selective.

#### FACTS & TRAVEL

From 2004 to 2013, a collection of 330 dwelling, storage space, and parking condominium units located in Providence—known as The 903—was subject to a tax stabilization agreement (hereinafter TSA).<sup>1</sup> In 2012, the city of Providence performed several statutorily mandated assessment updates on property values throughout the city, including The 903.<sup>2</sup> The city notified taxpayers that they could request an informal hearing if they wished to challenge the revaluation assessments.<sup>3</sup> The petitioners in this action—94 taxpayers—challenged, arguing that the 2012 revaluation appraised The 903 as too high.<sup>4</sup> The city ultimately reaffirmed its 2012 revaluation.<sup>5</sup> In 2013, the city taxed The 903 at the TSA's stabilized amount, not at their 2012 revaluation amount.<sup>6</sup> The TSA expired on December

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1. *Athena Providence Place et al. v. Elyse M. Pare, in her capacity as Tax Assessor for the City of Providence, et al.*, 262 A.3d 679, 680 (R.I. 2021). In this context, a tax stabilization agreement sets stabilized value assessments for the property. *Id.*

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

31, 2013, and the city reassessed and revalued each unit in The 903.<sup>7</sup>

The city issued tax bills to the petitioners in 2014 and 2015 based upon the 2013 post-TSA reassessment of The 903's value.<sup>8</sup> The city sent no separate notice of reassessments for the 2014 and 2015 tax years.<sup>9</sup> The tax bills for each respective year were the only form of notice that petitioners received about the 2013 post-TSA revaluation.<sup>10</sup> The petitioners filed two separate petitions in the Rhode Island Superior Court, one on December 18, 2015, and the other on February 16, 2016.<sup>11</sup> Both petitions sought relief from the increased valuation that they were taxed in 2014 and 2015 due to the 2013 post-TSA revaluation.<sup>12</sup> The petitions were consolidated in Superior Court, and the parties agreed to submit the matter to the trial justice without a jury.<sup>13</sup> A decision was to be made on the merits pursuant to documentary evidence, written submissions, and stipulated facts.<sup>14</sup>

The trial justice ruled that the post-TSA 2013 revaluation of The 903 was, "selective, arbitrary, and discriminatory[;]" in other words, the revaluation was unjust and, therefore, invalid.<sup>15</sup> The trial justice ordered that the 2014 and 2015 tax bills "shall be revised based on the 2012 Revaluation."<sup>16</sup> Petitioners obtained a judgment over \$1.5 million, including both "prejudgment interest and statutory [sic] post-judgment interest[.]"<sup>17</sup> The city filed a timely appeal in the Rhode Island Supreme Court, resulting in a stay pending appeal in the Superior Court.<sup>18</sup>

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7. *Id.* The 2013 post-TSA revaluations were thirty percent higher than the 2012 valuation, and it was not based on physical changes. *Id.* at 680-81.

8. *Id.* at 681.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

## ANALYSIS &amp; HOLDING

The Rhode Island Supreme Court established that they utilize a *de novo* standard of review for questions of statutory interpretation, as is the case here.<sup>19</sup> The Court then noted that if a statute is clear and unambiguous, it must give the statute's words their plain and ordinary meaning and interpret the statute literally.<sup>20</sup>

The Supreme Court noted that the Rhode Island General Assembly mandates municipalities to conduct property revaluations every nine years and requires updates every three years.<sup>21</sup> The Court then asserted that these mandatory property revaluations must be conducted in an orderly and acceptable manner.<sup>22</sup> The Court continued, noting that "selective" assessments are typically unlawful because they discriminate against the contesting taxpayer.<sup>23</sup> The Court then defined a "selective" assessment as one where the municipality singles out a taxpayer or a small group of taxpayers for "revaluation or for first-time assessment when similar property is not assessed for any tax liability."<sup>24</sup> Thus, the Court centered its analysis on whether the 2012 and 2013 revaluations of The 903 were "selective."<sup>25</sup>

The Supreme Court noted that the 2012 revaluation was citywide and determined "100% of fair market value,' of properties as of December 31, 2012."<sup>26</sup> However, while that December 31, 2012 revaluation was ongoing, The 903 was subject only to the TSA's stabilized tax valuations.<sup>27</sup> The Court asserted that when the petitioners were paying their stabilized property taxes pursuant to the TSA's stabilized property valuations, they were properly exempt from taxation on The 903 property.<sup>28</sup> Accordingly, the

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19. *Id.* (citing *Balmuth v. Dolce for Town of Portsmouth*, 182 A.3d 576, 580 (R.I. 2018)).

20. *Id.*

21. *Id.* at 682.

22. *Id.* (citing *Capital Properties, Inc. v. State*, 749 A.2d 1069, 1084 (R.I. 1999) (quoting *Picerne v. DiPrete* 428 A.2d 1074, 1077 (R.I. 1981))).

23. *Id.*

24. *Id.* (citing *Picerne*, 428 A.2d at 1077).

25. *Id.* at 682.

26. *Id.*

27. *Id.*

28. *Id.* The Court cited 44 R.I. Gen. Laws § 44-3-9(a)(1): property that is subject to a stabilized amount of taxes which is paid on account of the property (like the stabilized tax payments petitioners made pursuant to the TSA), are

Court concludes that it was proper for The 903 to be subject to TSA-value taxation—not fair-market-value taxation—on December 31, 2012.<sup>29</sup>

The Supreme Court found that the city performed the 2013 revaluation because the TSA expired on December 31, 2013, which was in the middle of the revaluation cycle.<sup>30</sup> Upon expiry, the Court determined that The 903 correctly became subject to taxation “based on the fair market assessed value [of The 903].”<sup>31</sup> Moving to whether that revaluation was “selective,” the Superior Court “found no evidence in the record submitted that any other properties were revalued as of December 31, 2013.”<sup>32</sup> However, the Supreme Court determined that this finding by the Superior Court overlooked and misconceived material evidence.<sup>33</sup>

According to the Supreme Court, the record’s only evidence as to whether other properties were revalued upon the expiration of an agreement was testimony from staff members of the city’s tax assessor’s offices.<sup>34</sup> The city’s deputy tax assessor testified that the lead tax assessor would highlight properties that need to be examined each year and that The 903’s TSA was expiring on December 31, 2013.<sup>35</sup> The deputy tax assessor further testified that The 903’s TSA was expiring, meaning that the property would need to be reviewed.<sup>36</sup> Both the city’s lead and deputy tax assessor testified that properties that move from a stabilized to non-stabilized status prompt revaluation.<sup>37</sup> They also testified that any other property which faced such a shift in 2013 would have been subject to revaluation.<sup>38</sup> However, neither the lead nor deputy tax assessor could specifically recall what other properties were revalued in 2013.<sup>39</sup>

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exempt from taxation, notwithstanding the valuation of the property or the rate of tax. *Id.*

29. *Id.* at 683.

30. *Id.*

31. *Id.* (citing 44 R.I. Gen. Laws § 44-5-1 and 44-5-12(a)).

32. *Id.* at 682.

33. *Id.* at 683.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

The Supreme Court ruled that the petitioners failed to carry their burden of proof that the 2013 revaluation was selective: “[t]he petitioners failed to present any evidence that similar[y] [situated] properties in the city were not subjected to revaluation, and there is no evidence in the record that the property was singled out for revaluation.”<sup>40</sup> Ultimately, the Court concluded that the record showed that it was the city’s normal practice to revalue and reassess once a property’s tax stabilization agreement has expired.<sup>41</sup>

Finally, at the Superior Court level, the trial justice took issue with the supposed lack of notice that was afforded to the petitioners vis-à-vis the 2013 revaluation; the 2013 revaluation was discriminatory because “all the procedural and substantive benefits of a revaluation afforded to all the [c]ity’s taxpayers were not afforded the [p]etitioners in the 2013 Revaluation.”<sup>42</sup> However, the Supreme Court determined that this Superior Court finding was “clearly erroneous” because their review of the record showed that the city met the two statutory requirements for the 2013 revaluation.<sup>43</sup> The Supreme Court ultimately ruled that the trial justice “clearly erred” in finding that “[The 903 was] denied ‘all the procedural and substantive benefits of a revaluation[.]’”<sup>44</sup>

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40. *Id.* (citing *Willow St. Assocs. LLP v. Bd. of Tax Assessment Rev.*, 798 A.2d 896, 899-900 (R.I. 2002) (quoting *Ferland Corp. v. Bouchard*, 626 A.2d 210, 215 (R.I. 1993)); *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 99 (R.I. 2006)).

41. *Id.* at 683.

42. *Id.* at 684.

43. *Id.* The Supreme Court found that the city complied with both statutory notice provisions. First, the Court found that the city complied with 44 R.I. Gen. Laws § 44-5-15 (requiring municipalities to, “post prior notice of the assessment in public places and advertise the assessment in a newspaper of statewide circulation[ . . . ]” (citing *Balmuth v. Dolce for Town of Portsmouth*, 182 A.3d 576, 581 (R.I. 2018))) because the city adequately published a notice of assessment for the 2014 and 2015 tax years, and the petitioners did not dispute the adequacy of such notices. Second, the Court found that the city complied with 44 R.I. Gen. Laws § 44-7-7 (requiring municipalities to notify taxpayers of the amount to be taxed) because the city sent petitioners bills for the 2014 and 2015 tax years, informing the petitioners of the tax amounts: “[t]he petitioners admitted that the city sent tax bills to the taxpayer-owners of The 903 for tax years 2014 and 2015.” *Id.*

44. *Athena Providence Place*, 262 A.3d at 684.

## COMMENTARY

The Rhode Island Supreme Court ruled that property subjected to stabilized tax payments made on account of said property is exempt from taxation, notwithstanding the property's valuation or the tax rate.<sup>45</sup> Further, municipalities must conduct revaluations when a TSA expires, which should be unsurprising to most property owners.<sup>46</sup> Finally, the Court ruled that "selective" revaluations occur when a property is subjected to a revaluation, yet other *similarly situated* properties are not.<sup>47</sup>

When challenging a municipality-conducted revaluation, litigants ought to consider several questions. First, if they are challenging based on discrimination, can they show by a preponderance of the evidence that it was selective? Second, if they are challenging because they were subject to a TSA, can they establish that the TSA was in effect at the time, and can they meet the exemption requirement?<sup>48</sup> Finally, if they are challenging based on a lack of notice, can they establish that the municipality failed to meet the two statutory notice requirements?

Prospective litigants may benefit from synchronizing their TSA's expiration with the end of the nine-year General Assembly-mandated revaluation period. This would effectively make every property holder, regardless of a TSA, due for a revaluation simultaneously. This may give litigants a better pool of data if they are trying to challenge a potentially selective assessment: if everyone's property revaluation is supposed to be conducted in the same year, then any potential discriminatory selections would stand out. Such a policy may also benefit municipalities, as it may make record-keeping more straightforward.

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45. *Id.* at 682.

46. *Id.* at 683.

47. For example, imagine five properties in a municipality with separate TSAs, all set to expire on December 31, 2023. These five separate properties are similarly situated, as they can expect the municipality to subject them to revaluation after December 31, 2023. After each TSA expires, the municipality reevaluates only one of the five properties, presenting a selective assessment scenario because the reevaluation of one property, considering the expiration of the TSA for the other four, was selective, assuming the properties were inherently similar.

48. *Athena Providence Place*, 262 A.3d at 682.

CONCLUSION

The Rhode Island Supreme Court held that when properties pay stable tax values pursuant to a tax stabilization agreement, the law exempts them from ordinary property taxation, notwithstanding the property's valuation or the tax rate. The Court also held that once a TSA expires, municipalities are entitled and statutorily required to tax the property at its full and fair value pursuant to a revaluation of the property, so long as the municipality provides adequate statutory notice for the assessment and the revaluation is not selective.

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