CITY COUNCIL WORKSHOP

MEETING TO BE HELD REMOTELY

April 14, 2021

5:00 PM

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EXECUTIVE SESSION:

Executive Session re: Soley Wharf LLC v. the Proprietors of Portland Pier et al. with the City attorneys, pursuant to 1 M.R.S. section 405(6)(E)

Executive Session to discuss the City Council's legal rights and duties regarding the revaluation with the City attorneys, pursuant to 1 M.R.S. section 405(6)(E)

Executive Session re: Fire, Police Patrol and Police Superior Officers bargaining guidance, pursuant to 1 M.R.S. section 405(6)(D)

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July 13, 2020

Danielle West-Chuhta, Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04041

RE: Opinion Regarding Proposed Phase-in of 2020 Revaluation

Dear Danielle:

You have asked our firm to provide the City-with an opinion on two questions. The first is whether the City Council and/or the City Manager have authority to require the 2020 Revaluation to be phased-in over a two-year period, or, whether this authority resides solely with the Assessor. The second question is whether a phased-in revaluation is legally permissible.

For the reasons that follow, we believe that the decision whether to adopt a phased-in revaluation rests exclusively with the Assessor. With respect to the second question, I have found no case law in Maine directly on point and decisions from around the country that address this issue are conflicting. However, when the governing law is considered in light of the practical and administrative considerations associated with a phased-in revaluation, we recommend against implementing a phased-in approach.

1. The Assessor Has Sole Authority to Determine Whether to Pursue a Phased-In Revaluation.

We have reviewed the applicable provisions of the Maine Constitution, state statue, and the City's Charter regarding the respective roles and responsibilities of the Assessor, the Council, and the City Manager relating to the assessment and administration of property taxes. In our view, when read together, these authorities make clear that it is the Assessor (and no other official or body) who is responsible for the valuation of all property within the City of Portland. As the term implies, a "re-*valuation*" is, fundamentally, a determination of value. Accordingly, as explained below, the authority to determine whether to implement a phase-in resides with the Assessor.

Maine's Constitution requires that "[a]ll taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof." Me. Const. art. IX, § 8. Similarly, Maine statue provides that "all property shall be assessed at the just value thereof in compliance with the laws of the State." 36 M.R.S. § 201. The Legislature has assigned the task of determining "just value" to the local assessor(s). *See* 36 M.R.S. § 701-A ("[I]n the assessment of property, ***assessors** in determining just value* are to define this term in a manner that recognizes only that value arising from presently possible land use alternatives…. *In determining just value,* ***assessors*** must consider all relevant factors….") (emphasis added); *See also* 36 M.R.S. § 708 ("the ***assessors***…*shall ascertain* as nearly as may be the nature, amount and <u>*value*</u>…of the real estate and personal property subject to be taxed….") (emphasis added); 36 M.R.S. § 709 ("[t]he <u>***assessors***</u> shall assess upon the estates in their municipality all municipal taxes….make perfect lists thereof and commit same…..to the tax collector…") (emphasis added)

When considered as a whole, these statutory and constitutional provisions lead to the conclusion that it is the assessor who is responsible for all decisions regarding *valuation* of real property. While a municipality's legislative body has certain powers with respect to property taxation pursuant to 36 M.R.S. § 505 (such as raising and appropriating taxes and making administrative decisions about when to commit taxes, when they will be due and payable, and what interest rate will be applied when they become delinquent), the initial valuation of property is entirely within the purview of the assessor.

We found nothing in the City's Charter that would lead to a different conclusion. The Council has authority over the "administration" of all fiscal matters (Section 2) and must adopt the annual appropriation resolve (Section 7). The City Manager is responsible for budget preparation, which must address "proposed tax levies" (Section 5(e)) and the preparation of a capital improvement plan (Section 6). However, the Charter does not authorize either the City Manager or the Council to get involved in *valuation* determinations. The Charter is silent on this point. It is our view, therefore, that State statute dictates. As discussed above, the Legislature has expressly vested the authority to make valuation determinations in the assessor.

Although local tax assessors are chosen by the municipality, the Maine Supreme Judicial Court has held repeatedly that an assessor acts as an agent of the State in performing his or her assessment duties. *See Inhabitants of Town of Frankfort v. Waldo Lumber Co*., 128 Me. 1, 145 A. 241 (1929); *City of Rockland v. Farnsworth*, 93 Me. 178, 44 A. 681 (1899); *McKay Radio and Telegraph Co. v. Inhabitants of Town of Cushing*, 131 Me. 333, 162 A. 783 (1932); *Inhabitants of Town of Milo v. Milo Water Co.*, 131 Me. 372, 163 A. 163 (1932); *Thorndike v. Inhabitants of Camden*, 82 Me. 39, 19 A. 95 (1889); *see also* 36 M.R.S. § 201. According to the Maine Municipal Association ("MMA"), "[t]hose duties are imposed by State law and cannot be altered by a vote of the local legislative body or municipal officers." *See* MMA's Municipal Assessment Manual at p. 19.

This conclusion is supported by the Law Court's holding in *Maine Consol. Power Co. v. Inhabitants of Town of Farmington*, 219 A.2d 748, 751 (Me. 1966) ("The Constitution of Maine requires of the assessors that they shall apportion and assess equally all taxes according to the just value of the real and personal estate. <u>*They are accountable to no one as long as they perform their duties in accordance with constitutional mandate and statutory direction*</u>." (emphasis added); *See also Sears, Roebuck v. Inhabitants of City of Presque Isle, et al*, 150 Me. 181, 189, 107 A.2d 475, 479 ("<u>*It is [the assessors'] opinion and their judgment that controls*</u>, unless so unreasonable in the light of the circumstances that the property is substantially overvalued and an injustice results, or that there is an unjust discrimination, or that the assessment was in some way fraudulent, dishonest or illegal."); *City of Rockland v. Farnsworth*, 44 A. 681, 682, 93 Me. 178 (1899) ("[Assessors'] duties are imposed by law, and clearly defined by statute. <u>*In the discharge of those duties they are not subject to the direction or control of the municipality*</u>. They must determine the persons and property, and its value, subject to taxation, under the provisions of law.") (emphasis added)

At its core, a revaluation involves determinations of value. Decisions regarding what value to assign properties in the first year of the phase-in necessarily involve determinations of value. Because valuation decisions, for all the reasons discussed above, are within the exclusive authority of the Assessor, it is our opinion that the decision whether to phase-in the revaluation is his alone.

2. Governing Law, Coupled With Administrative Considerations, Weighs Against a Phased-In Revaluation.

A. A Phased-in Revaluation May Contravene the City's Duty to Assess All Property According to its "Just Value."

As discussed above, assessors are bound by a constitutional duty to "apportion and assess" property according to its "just value." Me. Const. art. IX, § 8; 36 M.R.S. § 701-A. It is well-established under Maine law that "just value" is synonymous with fair market value. *See Weekley v. Town of Scarborough,* 676 A.2d 932 (Me. 1996) citing *Alfred J. Sweet, Inc. v. City of Auburn,* 134 Me. 28, 31 (1935); *Town of Southwest Harbor v. Harwood,* 2000 ME 213, 763 A.2d 115 citing *McCullough v. Town of Sanford*, 687 A.2d 629, 631 (Me. 1996)*; Terfloth v. Town of Scarborough,* 2014 ME 57, 90 A.3d 1131.

Pursuant to its constitutional duty to conduct a general valuation at least once every ten years, and it is statutory duty to ensure that certain minimum assessed value to sales ratios are met, the City engaged the services of Tyler Technologies CLT Appraisal Services to assist the Assessor in determining the just value of all real property within its boundaries. Me. Const. art. IX, § 7; 36 M.R.S. § 327. Once a property's just value has been determined, the assessor has a legal duty to assess all property in a manner consistent with that value. *See* 36 M.R.S. §§ 201, 701-A.

The practical upshot of a two-year phase-in of the revaluation is that a substantial portion of property within the City would *not* be assessed in accordance with its just value in year one. By definition, a phase-in would require a temporary intentional disregard of many properties' fair market value. Although this specific issue has not been addressed directly by Maine courts, we believe that there is a strong likelihood that a Court would find, despite the good intentions underlying it, that a phase-in contravenes the City's constitutional and statutory duty to assess property in accordance with its "just value."

B. A Phase-in May Contravene the City's Duty to Apportion and Assess All Property Equally.

To provide some context for the legal analysis regarding equality in assessment, a review of the practical ramifications of a revaluation is in order. Generally speaking, revaluations result in approximately one third of taxpayers' tax bills increasing, one third remaining the same, and one third decreasing. If a phased-in revaluation were implemented in Portland, it would lessen the impact of what could be substantial tax increases for a third of the City's taxpayers by spreading that increase over a two-year period. However, the phase-in would have little or no impact on the roughly one third of the City's taxpayers who would see a negligible change in their taxes. Moreover, a phase-in would operate as a detriment to the one third of taxpayers who would see a decrease in their taxes because they would have to wait two years to enjoy the full benefit of that decrease.

(i) Maine Law Requires That Property Taxes be "Apportioned and Assessed Equally" and That Similarly Situated Properties Receive Equal Tax Treatment.

Article IX, § 8 of Maine's Constitution not only requires that real property be assessed according to its just value, it also requires that it be "apportioned and assessed equally." Assessors must ensure that the tax burden is apportioned and assessed equally in order to prevent unjust discrimination between or among taxpayers. In order "to achieve an equitable distribution of the overall tax burden, assessors must apply a relatively uniform rate to all comparable properties in the district." *Petrin v. Town of Scarborough*, 2016 ME 136, 147 A.3d 842. In other words, all property in the same class must be valued in a like manner. *City of Biddeford v. Adams*, 1999 ME 49, 727 A. 2d 346. However, "only similarly situated properties must receive approximately equivalent tax treatment…. unjust discrimination does not exist where properties are treated differently from properties… that are not similar to their own." *Roque Island Gardner Homestead Corp. v. Town of Jonesport*, 2017 ME 152, 167 A.3d 564, citing *Town of Bristol Taxpayers' Ass'n v. Board of Selectmen/Assessors for Bristol*, 2008 ME 159, 957 A.2d 977 and *Angell Family 2012 Prouts Neck Trust v. Town of Scarborough*, 2016 ME 152, 149 A.3d 271.

Based on the authorities cited above, the relevant question becomes whether, by phasing in a revaluation, this results in unequal apportionment of the tax burden by treating similarly situated properties differently. As discussed below, this question has not yet been considered by Maine courts; however, it has been addressed by courts across the country, with inconsistent results.[1]

(ii) Extra Jurisdictional Cases Regarding the Legality of Phased-in Revaluations Have Both Upheld and Invalidated Them.

Because there is no decided case law in Maine on the issue of whether phased-in assessments are legally permissible, a review of extra jurisdictional cases provides some insight as to how Maine courts might decide this issue.[2]

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[1] *See, i.e., United Illuminating Company v. City of New Haven,* 427 A.2d 830 (Ct. 1980) (phase-in upheld); *Stafford Higgins Industries v. City of Norwalk,* 715 A.2d 46 (Ct. 1998) (phase-in upheld); *Claremont School District v. Governor,* 744 A.2d 1107 (N.H. 1999) (phase-in struck down); *Roosevelt v. Montana Dept. of Revenue,* 975 P.2d 295, 293 Mont. 240 (1999) (phase-in struck down).

[2] The cases discussed below are not intended to be an exhaustive account of all extra jurisdictional authorities on point. However, they offer a representative sampling of holdings both for and against phased-in assessments and the reasoning upon which those holdings were based.

(a) Cases That Upheld Phased-In Valuations

United Illuminating Company v. City of New Haven involved a state statute that allowed municipalities with assessments that increased by at least 30% after a revaluation to adopt local ordinances to phase-in those increases over a five year period. *United Illuminating Company v. City of New Haven,* 427 A.2d 830 (Ct. 1980). The City of New Haven adopted such an ordinance, which was challenged by the Plaintiff. As a result of the revaluation, Plaintiff's tax burden went down. Yet, because of the phased-in approach, it had to pay more taxes in the early years of the phase-in than it would have otherwise paid had the revaluation been implemented immediately. This is analogous to what some Portland taxpayers would experience in year one of a two year phase-in.

In overturning the Superior Court, which found New Haven's phase-in ordinance unconstitutional on equal protection grounds, Connecticut's Supreme Court upheld it finding: "[t]his Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation." *United Illuminating Co.,* 179 Conn. at 640 citing *Carmichael v. Southern Coal & Coke Co*., 301 U.S. 495, 509, 57 S.Ct. 868, 872. The Court concluded:

The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized....the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes….

United Illuminating Co., 179 Conn. at 641, citing *Madden v. Kentucky*, 309 U.S. 83, 87-88, 60 S.Ct. 406, 408 (1940).

In *Stafford Higgins Industries, Inc. v. City of Norwalk,* Connecticut's Supreme Court once again upheld a city's decision to delay implementation of a revaluation. While Norwalk's phase-in postponed tax increases for many residential property owners, it operated to deny Plaintiff (a commercial property owner) what would have been a 39% decrease in its tax bill had the revaluation been implemented immediately. The Court relied on its prior holding in the *United Illuminating Co.* case that a classification must be "hostile and oppressive discrimination" before it can be found to be unconstitutional. *Stafford Higgins Indus., Inc.*, 245 Conn. at 569, 715 A.2d at 56. The Court went on to state:

> …when a court determines whether a legislative classification is a hostile and oppressive discrimination against a particular class, the challenger must establish that the legislature "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Id.* citing *Personnel Administrator of Massachusetts v. Feeney,* 442 U.S. 256, 279, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979). The court reasoned that the City chose the classification "not to burden commercial property owners, but to alleviate the burden on single-family homeowners,

> that is 'in spite of,' not 'because of' the burden which would be assumed by [others]." *Stafford Higgins Indus., Inc.,* 245 Conn. at 571, 715 A.2d at 56.

The Court also cited its prior analysis in the *United Illuminating Co.* case for the proposition that "the goal of protecting residential property owners from a sudden increase in taxation due to revaluation was a legitimate basis for legislation that authorized delay in the implementation of the new tax scheme, despite that the delay temporarily thrust an unequal burden of taxation on other categories of real property owners. *Stafford Higgins Indus., Inc.,* 245 Conn. at 572, 715 A.2d at 57.

There was a very strong dissent in the *Stafford Higgins* case. The minority argued that giving a tax break to residential property owners at the expense of commercial properties ran afoul of constitutional principles, which require that all property be: (a) treated as one class, whether residential or commercial; and (b) assessed (as in Maine)[3] at at least 70% of its "actual and true" value. In concluding that the phase-in violated equal protection guarantees, the minority pointed out that the "equal protection clause…protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class"); *Stafford Higgins,* 245 Conn. at 585, 715 A.2d at 63 (1998) citing *Hillsborough v. Cromwell,* 326 U.S. 630, 623, 66 S. Ct. 445, 90; *Charleston Federal Savings & Loan Assn. v. Alderson,* 324 U.S. 182, 190, 65 S.Ct. 624, 89 L.Ed. 857 (1945) (equal protection clause "applies ... to taxation which in fact bears unequally on persons or property of the same class"). In response to the majority's insistence that a challenger must establish some hostile and oppressive discrimination against a particular class, the minority responded as follows:

> …the United States Supreme Court has held that purposeful discrimination in tax cases "may be evidenced ... by a systematic under-valuation of the property of some taxpayers and a systematic over-valuation of the property of others….*Snowden v. Hughes*, 321 U.S. 1, 9, 64 S.Ct. 397, 401(1944); *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia,* 488 U.S. 336, 346, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989) ("[t]he relative undervaluation of comparable property... over time therefore denies petitioners the equal protection of the law"); see also *Long Island Lighting Co. v. Brookhaven,* 889 F.2d 428, 432 (2d Cir.1989) ("requisite unlawful intent [to discriminate] follows from proof of a systematic overassessment over time of certain properties as compared to other similarly situated properties within the taxing district").
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> *Stafford Higgins*, 245 Conn. at 592, 715 A.2d at 66.

(b) Cases That Struck Down Phased-in Valuations

In *Roosevelt v. Montana Dept. of Revenue*, Montana's Supreme Court, relying on similar reasoning to that applied by the minority of Connecticut's Supreme Court in the *Stafford Higgins* case, struck down a Montana statute that allowed a phase-in. *Roosevelt v. Montana Dept. of*

[3] *See* 36 M.R.S. § 327.

Revenue, 975 P.2d 295, 293 Mont. 240 (1999). The Court found that as applied to the Plaintiff, (who would have seen a reduction in his taxes but for the phase-in), the challenged statute violated his equal protection rights. As in Portland, the intention of the phased-in revaluation in Montana was to ease the burden on taxpayers whose properties had substantially appreciated in value. However, as would also be the case in Portland if it implements a phase-in, those individuals who would see reductions in property taxes as a result of the revaluation would not fully realize the benefit of that reduction until the phase-in was complete. According to Montana's Supreme Court, such a disproportionate burden, (which results in some individuals being taxed at less than true market value of their properties, while others are taxed at more than market value) violates constitutional equal protection guarantees. *Roosevelt,* 975 P.2d at 301, 293 Mont. at 249.

In *Claremont School District v. Governor*, 144 N.H. 210, 744 A.2d 1107 (1999), the Supreme Court of New Hampshire held that a phase-in of a state-wide uniform education property tax (that effectively granted a temporary exemption to taxpayers in "property rich" towns across the state, while taxpayers in remaining towns paid the full rate immediately), violated constitutional requirements of uniformity and equality. The court also found that this disparate treatment was not justified by the Legislature's stated purpose of ameliorating potential adverse economic consequences on towns with higher property values due to sharp increases in property taxes. While the *Claremont* case involves municipalities rather than individual taxpayers, the concepts at play are analogous.

In coming to its conclusion, New Hampshire's Supreme Court stated, "[j]ustices of this court have consistently interpreted the New Hampshire Constitution as requiring that all property within a given class be taxed at a uniform rate." *Claremont*, 144 N.H. at 215, 744 A.2d at 1110 citing *Opinion of the Justices*, 123 N.H. 296, 301, 460 A.2d 93, 97 (1983); *Opinion of the Justices*, 131 N.H. 640, 642, 557 A.2d 273, 275 (1989) (legislature may not create systems of taxation which would result in two classes of taxpayers paying differing rates of tax on essentially the same class of property); *Opinion of the Justice*s, 99 N.H. 525, 527, 113 A.2d 547, 548 (1955) ("All taxes on like property and for like purposes must be equal.") The court also struck down the uniform education property tax because the means employed "to effect [the differential treatment] failed to comport with the articulated justification." *Claremont*, 144 N.H. at 215, 744 A.2d at 1111. According to the court, "[b]y awarding tax relief to the many who are not in jeopardy of economic hardship… to assist those who are, the legislature has cast too wide a net at the problem it intended to solve. Consequently, because its remedy far exceeds the underlying rationale for the phase-in and assists a large class of taxpayers to whom disparate tax treatment cannot be justified, the selection of taxpayers is so arbitrary as to serve no useful purpose of a public nature." *Id.*

(c) Likely Result Under Maine Law if Phase-In Were Challenged

Because there is no case law directly on point, it is uncertain how Maine courts would address the issue of whether a phased-in revaluation violates the Maine Constitution's requirement that taxes on real property must be "apportioned and assessed equally." Me. Const. art. IX, § 8.

However, based on existing Maine case law as well as jurisprudence from the U.S. Supreme Court, we believe that a phased-in approach would more likely than not be struck down if challenged.

As a threshold matter, a Maine court presented with this issue might not even reach the substantive merits of the equality argument. This is because it might consider a phased-in revaluation tantamount to an "abatement" given that the full amount of taxes owing (based on the property's "just value") could be substantially reduced for approximately a third of all taxpayers during the first year of the phase-in. Any such reduction might well be considered unlawful given the Law Court's holding that there is no home rule authority to grant property tax relief in the form of an abatement absent clear statutory authority from the Legislature. *See generally Delogu v. City of Portland*, 2004 ME 18. No such legislative authority to implement phased-in assessments exists in Maine.[4]

At issue in *Delogu* was a property tax relief program adopted by the City of Portland that was limited to owner-occupied residential homes with assessed values of less than $400,000. The Plaintiffs were homeowners and business property owners who were not eligible for the tax relief program. The question presented to the Law Court was "whether, consistent with the Maine Constitution, Article IX, Sections 8 and 9, the City may unilaterally adopt what may be viewed as an exemption, abatement, or tax repayment program absent explicit legislative authority." *Delogu*, 2004 ME 18, ¶ 11, 843 A.2d 33, 36. Ultimately, the Court struck down the program holding that, "legislative authorization is a prerequisite for a municipal property tax rebate or repayment program targeting selected properties." *Delogu*, 2004 ME 18, ¶ 15, 843 A.2d at 37.

The second reason why the Law Court's struck down Portland's property tax relief program in *Delogu* was because it violated the constitutional mandate of equality in assessing. *Delogu*, 2004 ME 18, ¶ 12, 843 A.2d at 36 citing *Ram's Head Partners, LLC v. Town of Cape Elizabeth*, 2003 ME 131, ¶ 9, 834 A.2d 916, 919. A finding of discrimination is indicated when the municipal assessment system "necessarily results in unequal apportionment." *Id.* (quoting *City of Biddeford v. Adams*, 1999 ME 49, ¶ 14, 727 A.2d 346, 349). The underassessment or overassessment of one set of similarly situated properties supports a finding of unjust discrimination. *Id. citing Ram's Head Partners*, 2003 ME 131, ¶ 11, 834 A.2d at 919; *Adams*, 1999 ME 49, ¶¶ 15, 17, 19, 727 A.2d at 350. The Law Court in *Delogu* found that the burden of Portland's real estate tax was apportioned unequally because qualified homeowners were effectively being taxed upon $15,000 less in property value than other similarly valued, or even identical, nonqualifying properties). *Delogu*, 2004 ME 18, ¶¶ 12-13, 843 A.2d at 36–37.

Based on the foregoing, we believe that if Portland adopted a phase-in a revaluation, and it were challenged based on an inequality claim, there is a good possibility that it could be struck down for at least one of the following reasons.

[4] It is noteworthy that unlike in Maine, all of the cases cited above that considered the legality of phased-in revaluations (*regardless* of whether they were upheld or invalidated) involved enabling state statutes that specifically authorized the phase-in.

First, it arguably treats "similarly situated" properties differently. For example, in year one, roughly one third of *residential* properties will be receiving tax relief to protect from a substantial increase in property taxes, while approximately one third of *residential* properties will be denied the full benefit of the tax decrease in year one. This could be held to result in unequal apportionment of the tax burden contrary to constitutional mandate.[5]

Second, a court could find that in year one, a phase-in systematically overvalues some properties (i.e., those that will not enjoy the full benefit of reduced taxes resulting from the revaluation) and undervalues others (i.e., the just value of which is temporarily suppressed to cushion against substantial tax increases). It is our belief that the fact that this under/over-valuation was motivated by benevolent intentions would be irrelevant because under governing case law (from both Maine and the U.S. Supreme Court), if the assessment method *necessarily* results in unequal apportionment, then it is unlawful. *See City of Biddeford v. Adams,* 1999 ME 49, ¶ 14, 727 A.2d 346, 349; *Snowden v. Hughes,* 321 U.S. 1, 9, 64 S.Ct. 397, 401(1944); *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia,* 488 U.S. 336, 346, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989). Because a phased-in revaluation would systematically give tax breaks to those taxpayers whose taxes increased, while at the same denying the benefit of tax reductions to others, such a system arguably results in the unequal apportionment of the tax burden.

C. Administrative Factors Tip in Favor of Avoiding a Phased-In Approach.

When determining whether a phase-in of the revaluation is advisable, consideration must be given not only to the associated legal issues but also to the practical and logistical ones. Based on information received from the assessor's office, a phased-in revaluation will require the expenditure of substantial resources and staff time.

First, a phase-in presents challenges for assessing new construction, of which there has been a substantial amount in Portland. New construction is valued based on percentage of completion and relationship to market value. Accordingly, if the value of new construction had to be phased-in over two years, this would significantly increase the amount of work required for field visits and progress reviews.

Second, the City's assessing software has no ability to calculate phased-in values automatically. According to the assessor's office, there is no mechanism that allows the software to set the assessed value of each property at 50% in year one and to add the remaining 50% in year two.

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[5]We acknowledge that arguments can be made that the residential properties that would be subject to different tax treatment during a phase-in are not "similarly situated" because, for example, they are located in different neighborhoods, they are on-peninsula vs. off-peninsula, or have similar distinguishing factors. However, based on governing law, we do not believe that these differences would ultimately be determined to justify giving some residential property owners the benefit of a tax break (by suppressing the true market value of their properties in year one) while at the same time prolonging the full benefit of the tax relief many others would see immediately if not for the phase-in.

The system is only equipped to input values at 100% of market value for each property. In order to accomplish a phase-in, values for every single parcel would need to be manually overridden for year 1. Given that there are more than 24,000 parcels in the City's database, this would require a significant amount of staff time or hiring additional staff to do the necessary data entry.[6] The assessor's office reports that the substantial additional administrative burden that would result from a phase-in would likely result in having to push out the commitment date, with resulting delays in tax bills being sent out.

Third, by phasing-in valuations over a two-year period, the City may be facing two-rounds of abatement requests and valuation appeals rather than just one if the new assessed values were implemented all at once. The costs associated with addressing such requests for abatements and appeals can also be significant.

Summary and Conclusion

There are many relevant factors to consider when determining whether to phase-in the 2020 revaluation. The legitimate desire to soften the impact on taxpayers who may see a significant increase on their tax bills must be weighed against both the likelihood of success if the phase-in were subject to a legal challenge and the resulting administrative and logistical challenges a phase-in presents.

For the reasons stated above, it is our belief that on balance, the best approach would be to avoid the phase-in and to implement the revaluation all at once. In addition to the substantial administrative burden and strain on City resources a phase-in would present, there are a number of reasons why we believe that a legal challenge to the phase-in could be successful. As discussed, Maine courts could find that a phase-in: (1) constitutes an unauthorized "abatement" not contemplated by the Legislature; (2) is inconsistent with the City's constitutional and statutory duty to assess property at its "just value," (which is synonymous with fair market value); and (3) runs afoul of constitutional equal protection guarantees because it results in some property owners being taxed (in year one) at less than fair market value while others are being taxed at more than market value. While all three of these arguments may not ultimately prevail, the law of averages suggests that at least one of them is likely to do so.

Based on the foregoing, it is our recommendation to implement the revaluation all at once rather than instituting a two-year phase in.

[6] It is my understanding that while a phase-in was implemented during the 2006-2007 revaluation, this occurred concurrently with a change in the City's software so that the phase-in could be accommodated more readily from an administrative and technological standpoint than it could based on current circumstances.

We hope the foregoing has been responsive to your request. We would welcome the opportunity to discuss these issues further with you if that would be helpful.

Sincerely,

Leah B. Rachin

cc: Christopher Huff, Assessor