

STATE OF RHODE ISLAND  
NEWPORT, SC

SUPERIOR COURT

10 SEP 28 PM 1:41

JIM O'DELL, MADELINE O'DELL,  
CHRIS CLARENDON, DANIELLE  
COULTER, MICHAEL DELUCA, PAUL  
HILL, RUTH HOLLENBACH, JUSTIN  
KATZ, MARY KILMER, JIM MEGIN,  
DEETTA MORAN, WAYNE MORAN,  
KIRK MOSS, APHRODITE  
LAUREANNO, ANN PARKER, THOMAS  
PARKER, AND BRENDA AGUIAR

NC : 2010-0517

*Plaintiffs,*

vs.

DAVID ROBERT, in his capacity as Tax  
Assessor for the Town of Tiverton, Rhode  
Island and the TOWN OF TIVERTON,

*Defendants.*

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

PARTIES

- 24311503 ✓ 1.
- 11311504 ✓ 2.
- 211311505/3.
- 211311507 ✓ 4.
- 211311508 ✓ 5.
- 311311510 ✓ 6.

Plaintiff Jim O'Dell is an individual residing at 130 Warren Avenue, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.

Plaintiff Madeline O'Dell is an individual residing at 130 Warren Avenue, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.

Plaintiff Chris Clarendon is an individual residing at 171 Preservation Way, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.

Plaintiff Danielle Coulter is an individual residing at 34 Lawton Avenue, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.

Plaintiff Michael DeLuca is an owner of 683 Neck Road, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.

Plaintiff Paul Hill is an individual residing at 25 Cutter Lane, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.

- 01311511 7. ✓ Plaintiff Ruth Hollenbach is an individual residing at 843 Seaport Avenue, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311512 8. ✓ Plaintiff Justin Katz is an individual residing at 7 Arbor Terrace, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311513 9. ✓ Plaintiff Mary Kilmer is an individual residing at 90 Warren Avenue, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311514 10. ✓ Plaintiff Aphrodite Laureanno is an individual residing at 1763 Main Road, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311515 11. Plaintiff Jim Megin is an individual residing at 98 Horizon Drive, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311516 12. Plaintiff DeEtta M. Moran is an individual residing at 339 Village Road, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311517 13. Plaintiff Wayne G. Moran is an individual residing at 339 Village Road, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311518 14. Plaintiff Kirk Moss is an individual residing at 110 Warren Avenue, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311519 15. Plaintiff Ann Parker is an individual residing at 67 William Barton Drive, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311520 16. Plaintiff Thomas Parker is an individual residing at 67 William Barton Drive, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01311521 17. Plaintiff Brenda Aguiar is an individual residing at 931 Bulgarmarsh Road, Tiverton, Rhode Island and liable for property taxes to the Town of Tiverton.
- 01107792 18. Defendant Mr. David Robert ("Assessor"), in his official capacity, is the tax assessor of the Town of Tiverton, Rhode Island.
- Tiverton 19. Defendant Town of Tiverton is a duly organized municipal corporation located in the State of Rhode Island.

**JURISDICTION**

- 20. This Court has jurisdiction over this matter pursuant to the Uniform Declaratory Judgment Act, R.I. Gen. Laws § 9-30, R.I. Gen. Laws § 44-5-26, R.I. Gen. Laws § 44-5-27 and the Due Process Clauses of the United States Constitution and Rhode Island Constitution.

### PRELIMINARY ALLEGATIONS

21. The Plaintiffs are owners of real property located in Tiverton, Rhode Island, which real property shall be taxed pursuant to a maximum levy, in accordance with R.I. Gen. Laws § 44-5-2.
22. In its fiscal year 2011, Tiverton levied a tax in an amount more than four and one-half percent (4.50%) in excess of the total amount levied and certified by that city or town in its fiscal year 2010.
23. That Tiverton exceeded the percentage increase as specified in R.I. Gen. Laws § 44-5-2 but Tiverton was not qualified to exceed the levy cap for fiscal year 2011 pursuant to R.I. Gen. Laws § 44-5-2 as Tiverton did not receive certification for fiscal year 2011 in full accordance with R.I. General Laws § 44-5, et. seq. and applicable regulations.
24. That Tiverton violated R.I. General Laws § 44-5-2 by not obtaining approval of the excess levy by the affirmative vote of at least four-fifths (4/5) of the full membership of the governing body of Tiverton in addition to the affirmative vote of the majority of the electors present and voting at the town financial meeting.

### COUNT I

25. Subject to certain exceptions, Rhode Island General Law 44-5-2 establishes that the fiscal year 2011 tax levy may be no greater than 4.5% higher than that of fiscal year 2010 (the "tax cap").
26. Rhode Island General Law 44-5-2(e) requires that a tax levy exceeding the tax cap must be approved by "the affirmative vote of at least four-fifths of the full membership of the governing body of the city or town."
27. The Town Council of the Town of Tiverton (the "Town Council") did not take the governing body vote required by Rhode Island General Law 44-5-2(e).
28. Tax levied in excess of the tax cap was and is illegal.

**WHEREFORE**, Plaintiff prays for relief as follows:

- a. Relief from taxes imposed above and beyond the tax cap and from any further taxation made on the basis of that imposition;
- b. A judgment declaring that the tax levy in excess of the tax cap is excessive and unlawful;
- c. A judgment declaring the proper construction and interpretation of Rhode Island General Law 44-5-2(e).
- d. A refund of all tax payments made beyond what would be owed on a levy in compliance with the tax cap;
- e. Costs, interest, and fees; and
- f. Such other and further relief as this Court may deem equitable and just.

## COUNT II

29. Plaintiff incorporates the foregoing allegations by reference.
30. Regulations and other materials promulgated by the Rhode Island Division of Municipal Finance ("DMF") require that petitions for certification of authority to exceed the tax cap must be submitted to DMF or the Auditor General either no later than fifteen (15) or thirty (30) calendar days, as the case may be, in advance of adoption of an annual town budget.
31. The Town Council and its agents attempted to circumvent regulations by pursuing what it styled as an "informal determination of eligibility" with DMF, which was subsequently denied by DMF.
32. The Town of Tiverton did not timely petition DMF and instead petitioned for DMF certification after adoption of an annual budget at the May 2010 financial town meeting.

**WHEREFORE**, Plaintiff prays for relief as follows:

- a. Relief from taxes imposed above and beyond the tax cap and from any further taxation made on the basis of that imposition;
- b. A judgment declaring that the tax levy in excess of the tax cap is excessive and unlawful;
- c. A refund of all tax payments made beyond what would be owed on a levy in compliance with the tax cap;
- d. Costs, interest, and fees; and
- e. Such other and further relief as this Court may deem equitable and just.

## COUNT III

33. Plaintiff incorporates the foregoing allegations by reference.
34. The Town Council requested a fiscal year 2011 budget which called for a tax levy in excess of the tax cap.
35. The Town Council, through its agents, took steps which attempted to and did affect a tax levy in excess of the tax cap.
36. At the May 2010 financial town meeting, the Town Council President, in his official capacity, moved the meeting to approve exceeding the tax cap.
37. That Tiverton failed to publish meeting notices or warrants in accordance with the RI state law.
38. Official notices of proposed tax increases did not place the electors on proper notice that the Town Council would attempt to exceed the tax cap and/or that the tax levy could

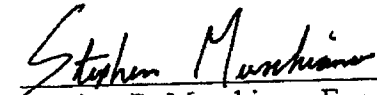
exceed the tax cap at the financial town meeting in accordance with the requirements of due process, the Property Tax and Fiscal Disclosure Law, and the Tiverton Town Charter.

**WHEREFORE**, Plaintiff prays for relief as follows:

- a. Relief from taxes imposed above and beyond the tax cap and from any further taxation made on the basis of that imposition;
- b. A judgment declaring that the tax levy in excess of the tax cap is excessive and unlawful;
- c. A refund of all tax payments made beyond what would be owed on a levy in compliance with the tax cap;
- d. Costs, interest, and fees; and
- e. Such other and further relief as this Court may deem equitable and just.

Respectfully submitted,  
Plaintiffs,

By their Attorneys,

  
\_\_\_\_\_  
Stephen R. Muschiano, Esq. (8034)  
11 Giblin Lane  
Coventry, RI 02816  
(401) 864-5293  
[smuschiano@gmail.com](mailto:smuschiano@gmail.com)

Matthew L. Fabisch (8017)  
4 Calvert St.  
Newport, RI 02840  
(401) 324-9344  
[mlfabisch@yahoo.com](mailto:mlfabisch@yahoo.com)

Dated: September 28, 2010

STATE OF RHODE ISLAND

SUPERIOR COURT

NEWPORT, SC

JIM O'DELL, MADELINE O'DELL,  
ET AL.,

*Plaintiffs,*

vs.

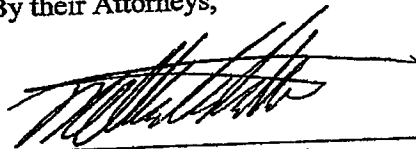
C.A. No. NC 2010-0517

DAVID ROBERT, in his capacity as Tax  
Assessor for the Town of Tiverton, Rhode  
Island and the TOWN OF TIVERTON,  
*Defendants.*

DISMISSAL STIPULATION

NOW COMES Plaintiff Danielle Coulter and hereby dismisses all the claims set forth in the Complaint and all other causes of actions asserted in the within matter without prejudice. To date, the above-captioned matter has not been served on the Defendants.

Respectfully submitted,  
Plaintiffs,  
By their Attorneys,



Matthew L. Fabisch (8017)  
4 Calvert St.  
Newport, RI 02840  
(401) 324-9344  
[mlfabisch@yahoo.com](mailto:mlfabisch@yahoo.com)

Stephen R. Muschiano, Esq. (8034)  
11 Giblin Lane  
Coventry, RI 02816  
(401) 864-5293  
[smuschiano@gmail.com](mailto:smuschiano@gmail.com)

Dated: November 8, 2010

10 NOV 13 PM 11:17